UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO 1:09cv197

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1. Ruger, model 223 mini rifle, serial number 18402495,	)	
2. Remington, model 510, 22 caliber rifle, no serial number,	)	
3. Remington model 1100, 12 gauge shotgun, serial number 489500V,	)	
4. Smith & Wesson, model 686-6, 357 revolver, serial number BFL8678,	)	
5. Smith & Wesson, model 66-1, 357 revolver, serial number 58K2950,	)	VERIFIED COMPLAINT
6. Smith & Wesson, model 60, 38 revolver, serial number R281894,	)	FOR
7. Beretta, model 92-F pistol, serial number BER065210Z,	)	FORFEITURE *IN REM*
8. Iver Johnson, model 32 S, shot revolver, no serial number;	)	
9. Winchester, model 12, 12 gauge shotgun, serial number 381915,	)	
10. Savage, model 67, 12 gauge shotgun, serial number E049816,	)	
11. Ithaca, 20-37 shotgun, serial number 371319647,	)	
12. Remington, model 1100, 12 gauge shotgun, serial number P061746M,	)	
13. Smith & Wesson, 22 caliber revolver, serial number 15768,	)	
14. Rossi, model 62, 22 caliber rifle, serial number G423145,	)	
15. Remington model 597, 22 caliber, serial number 2682801,	)	
16. Rossi, model 62 rifle, serial number G342855,	)	
17. Browning, model 22, 22 caliber rifle, serial	)	

number 70T37904,)
18. Remington, model 550-1, 22 caliber rifle, serial number X27,)
19. Winchester, model 57, 22 caliber rifle, serial number 29822,)
20. Smith & Wesson, model 19-3, 357 revolver, serial number 2K42357,)
21. Colt, model Mark IV, 45 pistol, serial number Sf10184,)
22. Ruger, model Mark II, 22 caliber pistol, serial number 21235826,)
23. High Standard, model Victor, 22 caliber pistol, serial number 2481060,)
24. Coly, model Challenger, 22 caliber pistol, serial number 28853C,)
25. Smith & Wesson, model 1006, pistol, serial number TET0461,)
26. Smith & Wesson model 15-4, 38 revolver, serial number 20K6793,)
27. Browning, model BT99, 12 gauge shotgun, serial number 01667RN199,)
28. Remington, model 1100, 12 gauge shotgun, serial number 529321V,)
29. Steyr, 30-06 rifle, serial number 9945,)
30 FEG, model 85M, 7.62 rifle, serial number SL01177,)
31. Marlin, model 782, 22 caliber rifle, serial number 15679437,)
32. Rexio, model 45/410, 45 caliber pistol,)
33. Cobb, model BA 50T, 50 caliber rifle, serial number 1101,)
34. Keltec, 9mm pistol, serial number E4404,)
)
and)
)
35. 1,558 rounds of ammunition (assorted),)
36. 141 rounds of ammunition (assorted),)
37 431 rounds of ammunition (assorted),)
38. 647 rounds of ammunition (assorted),)
39. 607 round of ammunition (assorted),)
40. 263 rounds of ammunition (assorted),)
41 87 rounds of ammunition (assorted),)
42 150 rounds of ammunition (assorted),)

43.	94 rounds of ammunition (assorted),	)
44.	178 rounds of ammunition (assorted),	)
45.	332 rounds of ammunition (assorted),	)
46.	302 rounds of ammunition (assorted),	)
47.	134 rounds of ammunition (assorted),	)
48.	125 rounds of ammunition (assorted),	)
		)
	Defendants.	)

NOW COMES the United States of America, plaintiff herein, by and through Edward R. Ryan, acting United States Attorney for the Western District of North Carolina, in a civil cause of forfeiture, and respectfully states the following:

1. This is a civil action for forfeiture *in rem* pursuant to 18 U.S.C. § 924(d)(1). Procedures for this action are mandated by 18 U.S.C. § 983; Rule G of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims, Title 28, U.S.C. Appendix; the Federal Rules of Civil Procedure; and, to the extent applicable, 19 U.S.C. §§1602-1621.

2. In this civil action commenced by the United States, this Court has original jurisdiction by virtue of 28 U.S.C. § 1345.

3. Because this is an action for the recovery or enforcement of a forfeiture under an Act of Congress, this Court has subject-matter jurisdiction by virtue of 28 U.S.C. § 1355(a).

4. Because any or all of the acts or omissions giving rise to forfeiture occurred in the Western District of North Carolina, this Court has *in rem* jurisdiction by virtue of 28 U.S.C. § 1355(b)(1).

5. This Court has venue pursuant to 18 U.S.C. § 981(h), 21 U.S.C. § 881(j), and 28 U.S.C. §§ 1355, 1356, and 1395. Venue is proper because the acts or omissions giving rise to the forfeiture occurred in this district, and/or the defendant property is found in this district.

6. The defendant property is located within the Western District of North Carolina. The defendant property has been seized.

7. The defendant property is all present and future interest in the following property:

1. Ruger, model 223 mini rifle, serial number 18402495,
2. Remington, model 510, 22 caliber rifle, no serial number,
3. Remington model 1100, 12 gauge shotgun, serial number 489500V,
4. Smith & Wesson, model 686-6, 357 revolver, serial number BFL8678,
5. Smith & Wesson, model 66-1, 357 revolver, serial number 58K2950,
6. Smith & Wesson, model 60, 38 revolver, serial number R281894,
7. Beretta, model 92-F pistol, serial number BER065210Z,
8. Iver Johnson, model 32 S, shot revolver, no serial number;
9. Winchester, model 12, 12 gauge shotgun, serial number 381915,
10. Savage, model 67, 12 gauge shotgun, serial number E049816,
11. Ithaca, 20-37 shotgun, serial number 371319647,
12. Remington, model 1100, 12 gauge shotgun, serial number P061746M,
13. Smith & Wesson, 22 caliber revolver, serial number 15768,
14. Rossi, model 62, 22 caliber rifle, serial number G423145,
15.. Remington model 597, 22 caliber, serial number 2682801,
16. Rossi, model 62 rifle, serial number G342855,
17. Browning, model 22, 22 caliber rifle, serial number 70T37904,
18. Remington, model 550-1, 22 caliber rifle, serial number X27,
19. Winchester, model 57, 22 caliber rifle, serial number 29822,
20. Smith & Wesson, model 19-3, 357 revolver, serial number 2K42357,
21. Colt, model Mark IV, 45 pistol, serial number Sf10184,
22. Ruger, model Mark II, 22 caliber pistol, serial number 21235826,
23. High Standard, model Victor, 22 caliber pistol, serial number 2481060,
24. Coly, model Challenger, 22 caliber pistol, serial number 28853C,
25. Smith & Wesson, model 1006, pistol, serial number TET0461,
26. Smith & Wesson model 15-4, 38 revolver, serial number 20K6793,
27. Browning, model BT99, 12 gauge shotgun, serial number 01667RN199,
28. Remington, model 1100, 12 gauge shotgun, serial number 529321V,
29. Steyr, 30-06 rifle, serial number 9945,
30 FEG, model 85M, 7.62 rifle, serial number SL01177,
31. Marlin, model 782, 22 caliber rifle, serial number 15679437,
32. Rexio, model 45/410, 45 caliber pistol;
33. Cobb, model BA 50T, 50 caliber rifle, serial number 1101,
34. Keltec, 9mm pistol, serial number E4404,

and

35. 1,558 rounds of ammunition (assorted),
36. 141 rounds of ammunition (assorted),
37 431 rounds of ammunition (assorted),
38. 647 rounds of ammunition (assorted),
39. 607 round of ammunition (assorted),
40. 263 rounds of ammunition (assorted),
41. 87 rounds of ammunition (assorted),
42. 150 rounds of ammunition (assorted),
43. 94 rounds of ammunition (assorted),
44. 178 rounds of ammunition (assorted),
45. 332 rounds of ammunition (assorted),
46. 302 rounds of ammunition (assorted),
47. 134 rounds of ammunition (assorted),
48. 125 rounds of ammunition (assorted),

Factual Basis

8. On March 24, 1994, the United States District Court for the Western District of North Carolina entered Judgment against Robert L. Van Buskirk on the single criminal offense of knowingly and willfully causing and attemping to cause a trade and business to file a tax return containing a material misstatement of fact, a violation of 26 U.S.C. § 6050I(f)(1)(B), 26 U.S.C. § 7203, and 26 U.S.C. § 7206(2).

9. That offense was punishable by imprisonment for a term of exceeding one year.

10. On November 12, 2008, Robert L. Van Buskirk resided at 433 Treasure Way, Ruthfordton, Rutherford County, North Carolina.

11. On November 12, 2008, Robert L. Van Buskirk possessed the defendant property on the premises of 433 Treasure Way, Rutherfordton, Rutherford County, North Carolina.

12. On November 12, 2008, the defendant property was in and affecting commerce and had been shipped and transported in interstate and foreign commerce,

Subject to Forfeiture

13. Based upon the totality of the circumstances, the defendant property is firearms and ammunition involved in or used in a knowing violation of 18 U.S.C. § 922(g)(1), that is, knowingly possessing, shipping, transporting, and receiving firearms and ammunition in and affecting commerce and which had been shipped and transported in interstate and foreign commerce, by a person previously convicted in any court of a crime punishable by imprisonment for a term exceeding one year, and is, therefore, subject to forfeiture to the United States pursuant to 18 U.S.C. §924(d)(1).

14. Upon information and belief, the following persons may have or claim an interest in the defendant property: Robert L. Van Buskirk, Joshua Ronald Van Buskirk, Matthew K. Van Buskirk, Kristopher Mark Murphy Van Buskirk, Robert Alden Van Buskirk, James Lee Abel.

WHEREFORE, the United States of America respectfully prays the Court that:

(1) a warrant for the arrest of the defendant property be issued;

(2) due notice be given to all parties to appear and show cause why the forfeiture should not be decreed;

(3) judgment be entered declaring the defendant property to be condemned and forfeited to the United States of America for disposition according to law; and

(4) the United States be granted such other and further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Respectfully submitted this the 22d day of May, 2009.

EDWARD R. RYAN
ACTING UNITED STATES ATTORNEY

s/ THOMAS R. ASCIK
ASSISTANT UNITED STATES ATTORNEY
North Carolina Bar No. 17116
Attorney for the United States
100 Otis Street
Asheville, North Carolina 28801
Telephone: 828-259-0644
Fax: 828-271-4670
E-Mail: thomas.ascik@usdoj.gov

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO 1:09cv197

UNITED STATES OF AMERICA,)
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Plaintiff,)
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v.)
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4. Smith & Wesson, model 686-6, 357 revolver, serial number BFL8678,)
5. Smith & Wesson, model 66-1, 357 revolver, serial number 58K2950,) SETTLEMENT AGREEMENT
6. Smith & Wesson, model 60, 38 revolver, serial number R281894,)
7. Beretta, model 92-F pistol, serial number BER065210Z,)
8. Iver Johnson, model 32 S, shot revolver, no serial number;)
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	number 70T37904,	)
18.	Remington, model 550-1, 22 caliber rifle, serial number X27,	)
19.	Winchester, model 57, 22 caliber rifle, serial number 29822,	)
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21.	Colt, model Mark IV, 45 pistol, serial number Sf10184,	)
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26.	Smith & Wesson model 15-4, 38 revolver, serial number 20K6793,	)
27.	Browning, model BT99, 12 gauge shotgun, serial number 01667RN199,	)
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35.	1,558 rounds of ammunition (assorted),	)
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46.	302 rounds of ammunition (assorted),	)
47.	134 rounds of ammunition (assorted),	)
48.	125 rounds of ammunition (assorted),	)
		)
	Defendants.	)

NOW COMES the United States of America, plaintiff herein, by and through Anne M. Tompkins, United States Attorney for the Western District of North Carolina, together with the five Claimants, Joshua Ronald Van Buskirk, Matthew K. Van Buskirk, Kristopher Mark Murphy Van Buskirk, Robert Alden Van Buskirk, James Lee Abel, with counsel and guardians ad litem, and state that they have reached a settlement agreement, as follows,

1. The United States filed a verified Complaint in this civil action for forfeiture *in rem* on May 22, 2009, and the Court issued an Order for Arrest in Rem of the defendant properties on May 28, 2009. Documents 1, 2.

2. The five Claimants filed Claims on July 2, 2009, Answers on July 22, 2009, and revised Claims and Answers for juveniles Matthew K. Van Buskirk and Kristopher Mark Murphy Van Buskirk on September 28, 2009. Documents 5-9, 11-15, 25-27.

3. The Court appointed Guardians Ad Litem Brian Davis for juvenile Matthew K. Van Buskirk and Guradian Ad Litem Chris Callahan for juvenile Kristopher Mark Murphy Van Buskirk on September 9, 2009. Document 21.

4. The Court published a Pretrial Order and Case Management Plan on December 17, 2009, and the Court entered Orders extending the time for completion of discovery on May 5, 2009, and July 22, 2009. Documents 41, 43.

5. Extensive discovery has been conducted, including the depositions of four of the five Claimants, Joshua Ronald Van Buskirk, Matthew K. Van Buskirk, Kristopher Mark Murphy Van Buskirk, and Robert Alden Van Buskirk, and of Robert L. Van Buskirk, father of those four Claimants.

6. The parties have now reached the following agreement:

a. The United States agrees to release and return the firearms and ammunition claimed by each Claimant, as stated in the Attachment.

b. The Claimants and signatories herein agree that the firearms shall not be maintained and stored at the real property at 433 Treasure Way, Rutherfordton, Rutherford County, North Carolina, and shall not be maintained and stored at any property where Robert L. Van Buskirk resides.

c. Tina Van Buskirk, mother of Claimants Matthew K. Van Buskirk, Kristopher Mark Murphy Van Buskirk, Joshua Ronald Van Buskirk, and Robert Alden Van Buskirk, together with Nelson Alfonso Epley, Jr. agree to act as custodians of the returned firearms and ammunition. They jointly agree to act as trustees of the firearms of juvenile claimants Matthew K. Van Buskirk and Kristopher Mark Murphy Van Buskirk.

d. Nelson Alfonso Epley, Jr agrees to maintain the returned firearms and ammunition at his residence solely owned by him and wife, Linda Ann Epley, at 104 John C. Logan Road, Rutherfordton, Rutherford County, North Carolina. Nelson Alfonso Epley, Jr agrees he shall release the returned firearms and ammunition only tp the Claimants and Tina Van Buskirk.

e. Nelson Alfonso Epley, Jr stipulates that neither he nor his wife have been convicted of an offense carrying a possible sentence of imprisonment of greater than one year.

f. Tina Van Buskirk stipulates that she has never been convicted of. an offense carrying a possible sentence of imprisonment of greater than one year.

g. Claimants Matthew K. Van Buskirk, Kristopher Mark Murphy Van Buskirk, Joshua Ronald Van Buskirk, Robert Alden Van Buskirk, and James Lee Abel, together with Nelson Alfonso Epley, Jr and Tina Van Buskirk, understand and agree that under NCGS 14-315, a statute of the state of North Carolina, no person may give or transfer a handgun to a minor (under the age of 18) but subject to the exceptions under NCGS 14-269.7 and 14-316, statutes of the state of North Carolina. Under 14-269.7, a minor may not possess or carry a handgun, except if he "possesses a handgun for educational or recreational purposes while the minor is supervised by an adult who is present." Under 14.316, it is unlawful for a parent or guardian to allow an under-12-year-old to possess or use a gun or pistol "except when such child is under the supervision" of the parent or guardian.

h. The Claimants, Matthew K. Van Buskirk, Kristopher Mark Murphy Van Buskirk, Joshua Ronald Van Buskirk, Robert Alden Van Buskirk, and James Lee Abel, together with Nelson Alfonso Epley, Jr. and Tina Van Buskirk, agree to abide by the laws and statutes of the state of North Carolina and the United States concerning firearms and ammunition.

UNITED STATES DISTRICT COURT
Western District of North Carolina

UNITED STATES OF AMERICA

v. Case Number CR SH-CR 93-01

ROBERT L. VAN BUSKIRK
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, ROBERT L. VAN BUSKIRK, was represented by Thomas Bush.

On motion of the United States the court has dismissed count(s) 1,2,4.

The defendant pleaded guilty to count(s) 3. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
26 USC 6050I(f)(1) (B), 7203, 7206(2)	Cause and attempt to cause a trade and business to file return containing a material misstatement of fact	6/17/92	3

As pronounced on March 8, 1994, the defendant is sentenced as provided in pages 2 through 3 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $ 50.00, for count(s) 3, which shall be due immediately, without interest.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 24th day of March, 1994.

United States District Judge

Defendant's SSAN: 224-58-2102
Defendant's Date of Birth: 3-12-44
Defendant's address: Rt. 5, Box 449, Rutherfordton, N. C. 28139

Defendant: ROBERT L. VAN BUSKIRK
Case Number: CR SH-CR-93-01

PROBATION

The defendant is hereby placed on probation for a term of 1 year.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant may possess a firearm or destructive device, in accordance with the Order entered on March 16, 1994, by Paul B. Taylor, U. S. Magistrate.
3. Provide the Probation office with access to any requested financial information.
4. Perform 100 hours of community service under the direction of the Probation office.
5. Defendant may be given credit for the prison ministry work towards his community service at the discretion of the Probation office.
6. Continue to give truthful representations and cooperation to the Government with reference to any matter under criminal investigation.
7. Defendant may travel for those undertakings approved by the Probation office in the past two years.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4) The defendant shall support his or her dependents and meet other family responsibilities.
5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: ROBERT L. VAN BUSKIRK
Case Number: CR SH-CR-93-01

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	11
Criminal History Category:	I
Imprisonment Range:	8 months to 14 months
Supervised Release Range:	2 to 3 years
Fine Range:	$ 2,000 to $ 20,000
Restitution:	$

The fine is waived or is below the guideline range because of the defendant's inabilty to pay.

The sentence departs from the guideline range for the following reason(s): Departs to range of level 8, category I (0-6 months imprisonment). Upon motion of the Government, pursuant to USSG 5K1.1.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CRIMINAL NO. 4:93CR1-01

UNITED STATES OF AMERICA)
)
vs.) **ORDER**
)
ROBERT L. VanBUSKIRK)

THIS MATTER is before the Court on motion of the Defendant to travel out of the United States, filed July 12, 1993.

For the reasons stated in the motion and there being no objections by the United States Attorney or the Pretrial Services Division of the Probation Office,

IT IS, THEREFORE, ORDERED that the Defendant's motion to travel is **ALLOWED**, and he is hereby granted permission to travel to Helsinki, Sweden and Estonia during the month of August, 1993, for the purposes set forth in the motion.

The Clerk of Court is directed to certify copies of this Order to the Defendant, defense counsel, the United States Attorney, and to Pretrial Services Division of the Probation Office.

THIS the 15th day of July, 1993.

RICHARD L. VOORHEES, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

FILED
CHARLOTTE, N.C.
JUL 12 1993
U.S. DISTRICT COURT
W. DIST. OF N.C.

CASE NO.: 4: 93-CR-01

UNITED STATES OF AMERICA,	)	
	)	
vs.	)	**UNOPPOSED MOTION TO ALLOW DEFENDANT TO TRAVEL**
	)	
ROBERT L. VANBUSKIRK,	)	
	)	
Defendant.	)	

COMES NOW, the defendant and sets forth as follows:

1. The defendant has entered a plea, which is presently sealed, but involves Plea to one count of Failure to File a Form 8300.

2. For various reasons known to the government and to defense counsel, sentencing is expected to be deferred from calendar to calendar.

3. The defendant, because of his war hero decorations and the publication of his book, known as "Tail Wind", is a requested speaker in many Christian Ministries throughout the world.

4. The defendant desires to travel to Helsinki, Sweden and Estonia for purposes of meeting with various ministries who desire to translate his book into the languages of those countries.

5. The desire of the defendant to travel in August has been known to the government for a substantial period of time.

6. Chief Assistant U.S. Attorney Kenneth D. Bell, has been contacted and has no objection, as long as Pre-Trial Services has no objection.

7. The Pre-Trial Service Officer is Angela Pickett in Asheville, North Carolina.

WHEREFORE, defendant moves the Court for an Order permitting the defendant to travel and enter the attached proposed Order.

This the 12 day of July, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

lb:\vanbuski\mtntrave

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing party in the foregoing matter with a copy of this pleading or document, by depositing a copy of the same in the properly addressed envelope in an official depository under the exclusive care and custody of the United States Post Office Department, addressed to the opposing party, and as prescribed by Rule 5 of the Rules of Civil Procedure.

To: Kenneth D. Bell, Esquire
Assistant U.S. Attorney
Charles R. Jonas Building
Room 221
401 West Trade Street
Charlotte, North Carolina 28202

This 12 day of ~~March~~ July, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

lb:docs\certserv

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CASE NO.: 4: 93-CR-01

UNITED STATES OF AMERICA,	)	
	)	
vs.	)	**ORDER**
	)	
ROBERT L. VANBUSKIRK,	)	
	)	
Defendant.	)	

THIS CAUSE, having come on by Motion of the defendant and the U.S.A. by joint Motion and the court having reviewed said Motion, be it herein ORDERED AND ADJUDGED as follows:

1. The Clerk of Court for the Western District of North Carolina, is herein ordered to remit to the trust account of Bush, Thurman & Wilson, P.A., the $100,000.00 bond posted in this cause upon receipt of this Order.

2. All other conditions of defendant's bond shall remain in full force and effect.

This the 14th day of April, 1993.

Federal Magistrate Judge

lb:vanbuski\order.2

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing party in the foregoing matter with a copy of this pleading or document, by depositing a copy of the same in the properly addressed envelope in an official depository under the exclusive care and custody of the United States Post Office Department, addressed to the opposing party, and as prescribed by Rule 5 of the Rules of Civil Procedure.

To: Frank D. Whitney
Assistant District Attorney
Room 221, U.S. Courthouse
401 W. Trade Street
Charlotte, NC 28202

This 14 day of April, 1993.

BY: _____

Tom Bush
N.C. State Bar No. 14061
BUSH, THURMAN & WILSON, P.A.
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone (704) 377-4164

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CASE NO.: 4: 93-CR-01

UNITED STATES OF AMERICA,	)	
	)	
vs.	)	**JOINT MOTION TO MODIFY BOND**
	)	
ROBERT L. VANBUSKIRK,	)	
	)	
Defendant.	)	

COMES NOW, the defendant, by and through his counsel and jointly with the United States of America, through its counsel, Frank Whitney and moves the Court to modify the bond to the extent of releasing the $100,000.00 cash security, which was posted in this cause and as grounds therefore, set forth as follows:

1. At the initial appearance of the defendant in this cause, the court set a $2,000,000.00 bond to be secured by the signature of the defendant and the signature of one Rudolph Parton. In addition thereto, the Court required, within 5 days of the initial appearance, the posting of $100,000.00 in cash.

2. All conditions of the bond were timely met.

3. Since that time, many and numerous agreements have been reached between the government and defendant dealing with Plea Agreements, Forfeitures, Consent Judgments, and other matters.

4. As part and parcel of an overall global settlement, the defendant will be forfeiting various assets. In addition thereto, the defendant will be purchasing assets back from the government.

5. The parties have agreed, that the $100,000.00 cash bond is needed for purposes of resolving the forfeiture matters.

6. At all times material hereto, the defendant has abided by all conditions of his bond, has lived honorably while on bond, and the government has no knowledge that the defendant may violate any conditions of bond. The defendant is no longer facing a prison sentence pursuant to a Plea Agreement to be shortly signed.

7. Furthermore, the Court has sufficient security, in that, the defendant has an ownership interest in significant assets, should there be a violation of the bond and, in addition thereto, has a third neutral party of substantial wealth (Rudolph Parton), should there be any violation of the conditions of the bond.

WHEREFORE, the defendant and the Government move the court for an Order directing the clerk of the Federal District Court for the Western District of North Carolina, to provide to the trust account of Bush, Thurman & Wilson, P.A., the $100,000.00 cash bond posted in this cause immediately.

This the 14 day of April, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

Frank D. Whitney
Assistant U.S. Attorney

lb:vanbuski\mot.bon

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing party in the foregoing matter with a copy of this pleading or document, by depositing a copy of the same in the properly addressed envelope in an official depository under the exclusive care and custody of the United States Post Office Department, addressed to the opposing party, and as prescribed by Rule 5 of the Rules of Civil Procedure.

To: Frank D. Whitney
Assistant U.S. Attorney
Room 221, U.S. Courthouse
401 W. Trade Street
Charlotte, NC 28202

This 14 day of April, 1993.

BY: _____

Tom Bush
N.C. State Bar No. 14061
BUSH, THURMAN & WILSON, P.A.
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone (704) 377-4164

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4:93cr01-1

UNITED STATES OF AMERICA	)	
	)	
Vs.	)	**ORDER**
	)	
ROBERT L. VANBUSKIRK.	)	
	)	

THIS MATTER is before the court on defendant's

(1) Motion for Discovery (#17);

(2) Motion for Discovery and Inspection and to Require the Government to Disclose All Exculpatory Evidence (#18);

(3) Motion for Brady and Other Favorable Materials (#19);

(4) Motion for Disclosure of Rule 404(b) Evidence (#20);

(5) Request for Notice of Government's Intention to Use Evidence (#21);

(6) Motion Pursuant to 18, United States Code, Section 3504 for Disclosure of Electronic or Other Surveillance and for Establishing Evidence under 18, United States Code, Section 2518(8)(d)(9) and (10) (#22);

(7) Motion for Access to Original Tape Recordings (#23);

(8) Motion for Government Agents to Retain Rough Notes (#24);

(9) Motion to Compel Government to Announce, In Advance of Trial, Whether it Intends to Use Post Arrest or Post Conspiracy Statements (Redacted or Otherwise) of Co-Defendants (#25);

(10) Motion for Pretrial Hearing to Determine Whether Government has Sufficient Independent Evidence of Conspiracy to Warrant Admission of Alleged Co-Conspirator Statements (#26);

(11) Motion to Require Government to Submit Defendants Pre- and Post-Arrest Statements Prior to Trial (#27);

(12) Motion for Statements of Indicted and Unindicted Co-Defendants and Alleged Co-Conspirators (#28);

(13) Motion for Production of Psychiatric Evaluation and Other Evidence of Emotional Disorder of Any Government Witness (#29);

(14) Motion for Order Requiring Government to State Whether It Intends to Call Confidential Informant (#30);

(15) Motion Requiring Government to Admit or Deny the Existence of Other Investigation and Potential Indictments (#31);

(16) Motion for Leave to File Further Motions (#32); and

(17) Motion for Disclosure of Guidelines Sentencing Information Prior to Plea Agreement deadline (#33).

Defendant's Motion *in Limine* has been reserved by the district court for disposition inasmuch as it impacts the conduct of trial.

Paragraph II(C) of the Arraignment Order provides "[a]ll discovery motions should be filed in a single pleading captioned *'Motion for Discovery.'*" *Document 6.* The undersigned takes the position that filing multiple discovery motions requires the Clerk of this court to spend an inordinate amount of time docketing numerous preliminary matters, rather than docketing just one "Motion for Discovery." The court will not discourage counsel from filing whatever motions he deems appropriate (c.f. 18 U.S.C. § 3162(b)), but counsel should be keenly aware that marshalling all discovery motions in one pleading furthers defendant's right and the public's interest in a speedy trial.

Having considered the defendant's motions, and reviewed the file, the court enters the following Order.

IT IS, HEREBY, ORDERED:

1. That defense counsel be allowed to inspect and photocopy, prior to trial, the information, reports or objects discoverable under Rules 16(a)(1)(A), (B), (C), and (D) of the Federal Rules of Criminal Procedure.

2. That the government disclose to defense counsel all Brady material which is in the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence should become known, to the attorney for the government. Disclosure under this paragraph will include the following:

a. evidence or information specifically requested by the defendant which is favorable to the accused and "material either to guilt or to punishment." Brady v. Maryland, 373 U.S. 83, 87 (1963). See also United States v. Agurs, 427 U.S. 97, 106 (1976); Sennett v. Sheriff of Fairfax County, 608 F.2d 537 (4th Cir. 1979). Cf. United States v. Billups, 692 F.2d 320, 325-26 (4th Cir. 1982), cert. denied, 464 U.S. 820 (1983) (defendant's 25 Brady requests held too general to constitute "specific request" for documents withheld by the government).

b. evidence or information, whether or not specifically requested by the defense, which is of sufficient probative value as to create a reasonable doubt of the guilt of the accused or which tends to exculpate the accused. See United States v. Agurs, supra; Hamric v. Bailey, 386 F.2d 390, 393 (4th Cir. 1967); Barbee v. Warden, Maryland Penitentiary, 331 F.2d 842 (4th Cir. 1964).

c. evidence or information indicating that the prosecution's case includes perjured testimony. See Alcorta v. Texas, 355 U.S. 28 (1957); Campbell v. Reed, 594 F.2d 4 (4th Cir. 1979).

d. evidence or information tending to discredit or impeach the credibility of a government witness, including plea agreements. See Giglio v. United States, 405 U.S. 150, 154-55 (1972); Gordon v. United States, 344 U.S. 414 (1953); Chavis v. North Carolina, 637 F.2d 213 (4th Cir. 1980); United States v. Sutton, 542 F.2d 1239 (4th Cir. 1976); Boone v. Paderick, 541 F.2d 447 (4th Cir. 1976), cert. denied, 430 U.S. 959 (1977). Impeaching as well as exculpatory evidence is favorable to the accused under Brady. However, failure to disclose impeaching evidence on request violates constitutional protections only if it deprives defendant of a fair trial, such as where the suppression undermines confidence in the outcome. United States v. Bagley, 473 U.S. 667 (1985).

3. That, pursuant to Rule 12 (d)(2), the government disclose to defense counsel its intention to use in its evidence in chief at trial any evidence which the defense may be entitled to discover under Rule 16.

4. That the government shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or

experiments or copies thereof which are in the possession, custody or control of the government.

5. That no later than **ONE WEEK** before trial is scheduled to begin, unless special need is shown, the government shall disclose to defense counsel the identities of all informants who participated in, were eyewitnesses to, or helped to set up, the commission of the offenses alleged in the indictment. See Roviaro v. United States, 353 U.S. 53 (1957); United States v. Brinkman, 739 F.2d 977 (4th Cir. 1984); McLawhorn v. North Carolina, 484 F.2d 1 (4th Cir 1973). See also United States v. Jordan, 466 F.2d 99 (4th Cir. 1972), cert. denied, 409 U.S. 1129 (1973). By the same date, the government shall notify defendant whether it intends to use the testimony of such informant(s) at trial. United States v. Ariza-Ibarra, 651 F.2d 2 (1st Cir.), cert. denied, 454 U.S. 895 (1981); United States v. Webster, 490 F.2d 435 (8th Cir. 1974); United States v. Hayes, 477 F.2d 868 (10th Cir. 1973). Cf. United States v. Hargrove, 647 F.2d 411 (4th Cir. 1981) (Fourth Circuit found no error in trial court's refusal to direct disclosure of informant's identity and address where defendant knew informant's identity and testimony at trial conclusively established that informant's testimony would not have been helpful to defense).

6. The defendant has requested that the government be compelled to produce a list of witnesses it will call at trial. It is settled in this jurisdiction that "[only] in a capital case is the government required to furnish a pretrial list of government witnesses." United States v. Chase, 372 F.2d 453, 466 (4th Cir. 1967). However, the court may, upon an appropriate showing, order the government to produce a list of witnesses in accordance with Rule 16 of

the Federal Rules of Criminal Procedure. The Conference Committee Notes contained in the annotations to the Rule (Conf. Comm. Notes, H.R. 94-414) provide:

> "The Senate version of the bill eliminates these provisions [3-day advance witness list in noncapital cases], thereby making the names and addresses of a party's witness nondiscoverable. . . . The Conference adopts the Senate version. A majority of the Conferees believe it is not in the interest of effective administration of criminal justice to require that the government or the defendant be forced to reveal the names and addresses of its witnesses before trial."

The standard for exercising that discretion is whether the denial of such motion amounts to denial of the defendant's right to confrontation in violation of the sixth amendment. United States v. Jordan, supra. In light of the United States Attorney's open-file policy in this district, if such policy is in effect in this particular case, and the availability of names of likely government witnesses from that service, the court takes the position that witness lists will not be discoverable absent a special showing of need. This special showing must be more than a general need to prepare for trial or cross-examination. See, e.g., Cissell, Federal Criminal Trials, 246-49 (1987). No such special showing has been made in this case. Consequently, the defendant's motion for a witness list is denied. See also United States v. Anderson, 481 F.2d 685 (4th Cir. 1973), aff'd, 417 U.S. 211 (1974).

7. That the government shall advise defense counsel of its use of any mechanical or electronic surveillance of defendant in this case. Disclosure of the contents of any such surveillance recordings will be made only to the extent required by paragraphs 1 and 2 of this Order. The government will not be required to inquire of any state agencies about the surveillance of defendant by such agencies. See Reddy v. Jones, 572 F.2d 979 (4th Cir. 1977), cert. denied, 439 U.S. 839 (1978). However, if surveillance of defendant has been

conducted by any state and the government has received the results of such surveillance, it shall reveal the existence of the surveillance to defense counsel and shall disclose the results of the surveillance to the extent that such disclosure is required under paragraphs 1 and 2 of this Order.

8. That the government shall disclose to defense counsel any use of a mail cover or telegraph intercept in the investigation of defendant.

9. That, no later than **ONE WEEK** before the scheduled date for trial, unless good cause is shown, the government shall disclose to defense counsel any evidence the government will seek to admit under Rules 404(b), 803(24) and 804(5) of the Federal Rules of Evidence. See Huddleston v United States, 485 U.S. 681 (1988). See also Fed. R. Evid. 404(b) (effective as of December 1, 1991). C.f. Fed. R. Evid. 404(b) (former rule, which was effective until December 1, 1991).

10. That, upon written request of defendant to the government, the government shall make all government witnesses who are in protective custody, or otherwise under government control, available to defense counsel within a reasonable time before trial. "Defense counsel [will be allowed] to hear directly from the witness[es] whether [they are] willing to talk to the defense attorney, either alone or in the presence of his attorney." United States v. Walton, 602 F.2d 1176, 1180 (4th Cir. 1979). The government may petition the court for an ex parte determination of the applicability of this Order to any particular government witness.

11. That the government shall preserve all evidence or records arguably subject to disclosure under any of the Federal Rules of Criminal Procedure or under Brady and its progeny. Chavis v. North Carolina, supra. However, the government need not preserve a government agent's rough interview notes which have been incorporated into a formal report. United States v. Hinton, 719 F.2d 711 (4th Cir. 1983), cert. denied, 465 U.S. 1032 (1984). Further, due process does not require the government to preserve certain types of materials such as breath samples obtained from a defendant. California v. Trombetta, 467 U.S. 479 (1984).

12. That defendant's motion for a James hearing be denied. United States v. Hines, 717 F.2d 1481 (4th Cir. 1983), cert. denied, 467 U.S. 1214, 1219 (1984). The trial judge has the option to either admit conditionally the declarations of co-conspirators before the conspiracy has been independently established, subject to the subsequent fulfillment of that factual predicate, or conduct a pretrial hearing. United States v. McCormick, 565 F.2d 286, 289 n.5 (4th Cir. 1977), cert. denied, Carter v United States, 434 U.S. 1021 (1978). Defendant's rights are safeguarded by the district court's ability to declare a mistrial or dismiss the case if the government fails to prove aliunde that a conspiracy existed. United States v. Hines, supra, at 1488.

13. That defendant's motion for early disclosure of Jencks Act material be denied. 18 U.S.C. § 3500. United States v. Mechanik, 475 U.S. 66 (1986); see also United States v. Presser, 844 F.2d 1275 (6th Cir. 1988).

14. That defendant's motion to compel disclosure of ongoing investigations of him or potential indictments against him be denied. Defendant has relied on the government's Petite policy as the ground for this motion; however that policy is no more than a "housekeeping provision" and does not entitle defendant to the relief sought in this motion. United States v. Howard, 590 F.2d 564, 567-68 (4th Cir.), cert. denied, 440 U.S. 976 (1979).

15. That defendant's request for production of the reports of interviews of individuals who will not be government trial witnesses be allowed only to the extent that such disclosure is required by any other paragraph in this Order; otherwise the request is denied.

16. That defendant's request for disclosure of statements of co-conspirators is denied. United States v. Roberts, 811 F.2d 257 (4th Cir. 1987).

17. That the United States Attorney advise defense counsel whether or not the government has used any branch of the United States military in the investigation of this case.

18. That defendant's motions to compel the government to disclose its intention to use post-arrest or post-conspiracy statements and to disclose such statements is denied.

19. Defendant has made a motion for a Bill of Particulars which will be denied at this time; however, defendant may renew this motion upon a showing of special need.

Defendant has not shown that the information sought is unavailable through the open-file policy or is not contained in the government's request for notice of alibi defense.

A bill of particulars is appropriate where the indictment is sufficient to charge an offense, but insufficient to inform defendant of the particulars as to which he will have to defend at trial. United States v. Debrow, 346 U.S. 374 (1953). A bill of particulars is not, however, a discovery device, and cannot be used to bring about a result prohibited by Rule 16, Federal Rules of Criminal Procedure. Wong Tai v. United States, 273 U.S. 77 (1927). The function of a bill of particulars is to inform the defendant of the essential facts on which the charges are based in order to aid defense preparation. United States v. Schembari, 484 F.2d 931 (4th Cir. 1973). See also United States v. Duncan, 598 F.2d 839 (4th Cir.), cert. denied, 444 U.S. 871 (1979).

> The proper scope and function of a bill of particulars is not to obtain disclosure of evidence to be offered by the government at trial, but to minimize surprise, to enable movant to obtain such facts as are needed to prepare his defense, and to preclude a second prosecution for the same offense. A bill of particulars is not intended to give a defendant the benefits of the government's investigative efforts. Nor may it be used to compel disclosure of the government's legal theory prior to trial. A defendant is only entitled to know those central facts which will enable him to conduct his own investigation of the transactions that resulted in the charge against him. Moreover, a defendant is 'not entitled to compel the government to describe in detail the manner in which the crime was committed, thereby forcing the prosecution to fix irrevocably the perimeters of its case in advance of trial.'

United States v. Stroop, 121 F.R.D. 269 (E.D.N.C. 1988) (citations omitted; quoting United States v. Manotti, 323 F. Supp. 683, 696 (D. Del. 1971)).

Therefore, the motion will be denied at this time with leave granted to renew the motion after counsel for defendant has had an opportunity to either review the government's file or develop a more specific request supported by a memorandum of law.

20. Defendant has requests disclosure of psychiatric reports concerning government witnesses. To the extent such information is conveyed to the government in pretrial services reports, such reports are strictly confidential and disclosure of such report is governed by 18, United States Code, Section 3153, which provides:

> [I]nformation obtained in the course of performing pretrial services functions in relation to a particular accused shall be used *only* for the purposes of a bail determination and shall otherwise be confidential.

18 U.S.C. 3153(c)(1). Exceptions exist, however, yet none appear applicable to a psychiatric evaluation. The exceptions include:

> (A) . . . research related to the administration of criminal justice;
> (B) . . . persons under contract under section 3154(4) of this title [halfway houses and counseling services];
> (C) . . . probation officers for the purpose of compiling presentence reports;
> (D) . . . [a] pretrial diversion report, to the attorney for the accused and the attorney for the Government; and
> (E) . . . to law enforcement agencies for law enforcement purposes.

Section 3153(c)(2). The law requires that such report be used only for the "purposes of determining bail." No exception exists for psychiatric evaluations conducted at the behest of the government. The exception found in Section 3153(c)(2)(C) is inapplicable inasmuch as defendant is at the federal facility for purposes of evaluation, not treatment.

The undersigned has not been referred to any regulations promulgated by the Director, as required by Congress in Section 3153(c)(2), permitting release of such information to a federal facility conducting a psychiatric evaluation. Absent a specific provision allowing such release, or consent of the accused, the court lacks authority to release such confidential records. The privilege is held by the defendant and a privilege may only be waived by the holder. The government's motion will be denied.

20. That defendant's Motion for Grand Jury Transcripts be denied. Defendant has requested that the court order production of the grand jury transcripts of the testimony of any person who was in a position to legally bind defendant in respect to the conduct constituting the alleged offense. A threshold concern in any motion for grand jury transcripts is the need for secrecy in grand jury proceedings. Even if a defendant shows need, the court must balance secrecy considerations against a showing of particularized need for grand jury transcripts. Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211 (1979); In re Grand Jury Proceedings, 800 F.2d 1293 (4th Cir. 1986).

The need for secrecy in grand jury proceedings is to encourage witnesses to testify freely without fear of retaliation. United States v. Procter & Gamble Co., 356 U.S. 677, 682 (1958). The burden is on defendant to show particularized need for disclosure of testimony or that an exception exists allowing production of the material. Defendant has been unable to show particularized need or entitlement.

The general rule is that a defendant is entitled to relevant material, such as grand jury transcripts, where guilt or innocence may hinge on what was said and such material may aid in determination of "the precise substance of the statements." Dennis v. United States, 384 U.S. 855, 873 (1966). Additionally, certain defendants may be entitled to grand jury transcripts where an officer or employee, who is in a position to legally bind the corporation, testifies as to conduct constituting the alleged offense. In relevant part, Rule 16(a)(1)(A) provides:

> Where the defendant is a corporation . . . the court may grant the defendant . . . discovery of relevant recorded testimony of any witness before a grand jury who (1) was, at the time of the testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense . . . .

Id. The Rule only provides for disclosure of transcripts to a corporate defendant when an employee was in position "as to have been able legally to bind the defendant in respect to conduct constituting the offense . . . ."

Finally, the court will review the pleading to determine whether an exception exists under which defendant may obtain transcripts of grand jury proceedings. Rule 6(e)(3)(C)(ii), Federal Rules of Criminal Procedure, provides, in pertinent part:

> (C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made-. . .
>
> (ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury.

Defendant has not made a showing of misconduct occurring before the grand jury. Defendant's motion must fail because he is not a corporation, has not otherwise shown particularized need, and has not alleged misconduct occurring before the grand jury. Therefore, defendant's Motion for Grand Jury Transcripts is denied.

The government's duty under Rule 26.2, Federal Rules of Criminal Procedure, is not altered by this Order. After a witness other than the defendant has testified on direct examination, the government may be required to produce statements made before the grand jury by such witness if the statements are within the government's possession. Fed. R. Crim. P. 26.2(a) and (f)(3). See United States v. Jordan, supra (defendant tried for assault with intent to murder). In United States v. Jordan, the circuit court held that while it was error for the government to have failed to supply defense counsel with a transcript of a trial witness' grand jury testimony, the error was harmless because the trial witness' grand jury and trial testimony did not vary.

21. In light of the government's open-file policy in this district, if in effect in this particular case, and the foregoing other provisions of this Order, all other requests for discovery are denied. The court will reconsider any denied discovery request upon the showing of a special need, if such can be established after defense counsel has reviewed the government's file in this case.

22. At such time as the government provides defense counsel with discovery under subdivisions (a)(1)(C) or (D) of Rule 16, defense counsel shall, upon request of the United States Attorney, provide the government with reciprocal discovery under Rule 16 (b)(1). See also Wardius v. Oregon, 412 U.S. 470 (1973).

23. That defense counsel shall be allowed to file additional motions provided he can show good cause for the late filing.

24. Defendant's Request for Disclosure of Rule 12(d)(2) Evidence (#13) is denied to such extent that defendant seeks contingent future relief or for the court to compel voluntary disclosure. To the extent disclosure of such evidence is required under Rule 12(d)(2), the request is allowed.

IT IS FURTHER ORDERED that, unless another date has been specified, the discovery directed by this Order shall be provided to defense counsel no later than **ONE WEEK** prior to trial, unless special need is shown.

Nothing in this Order should be construed as affecting in any way defense counsel's ability to make discovery pursuant to the government's open-file policy, if such policy is in effect in this particular case.

This Order is entered in response to defendant's

(1) Motion for Discovery (#17);

(2) Motion for Discovery and Inspection and to Require the Government to Disclose All Exculpatory Evidence (#18);

(3) Motion for Brady and Other Favorable Materials (#19);

(4) Motion for Disclosure of Rule 404(b) Evidence (#20);

(5) Request for Notice of Government's Intention to Use Evidence (#21);

(6) Motion Pursuant to 18, United States Code, Section 3504 for Disclosure of Electronic or Other Surveillance and for Establishing Evidence under 18, United States Code, Section 2518(8)(d)(9) and (10) (#22);

(7) Motion for Access to Original Tape Recordings (#23);

(8) Motion for Government Agents to Retain Rough Notes (#24);

(9) Motion to Compel Government to Announce, In Advance of Trial, Whether it Intends to Use Post Arrest or Post Conspiracy Statements (Redacted or Otherwise) of Co-Defendants (#25);

(10) Motion for Pretrial Hearing to Determine Whether Government has Sufficient Independent Evidence of Conspiracy to Warrant Admission of Alleged Co-Conspirator Statements (#26);

(11) Motion to Require Government to Submit Defendants Pre- and Post-Arrest Statements Prior to Trial (#27);

(12) Motion for Statements of Indicted and Unindicted Co-Defendants and Alleged Co-Conspirators (#28);

(13) Motion for Production of Psychiatric Evaluation and Other Evidence of Emotional Disorder of Any Government Witness (#29);

(14) Motion for Order Requiring Government to State Whether It Intends to Call Confidential Informant (#30);

(15) Motion Requiring Government to Admit or Deny the Existence of Other Investigation and Potential Indictments (#31);

(16) Motion for Leave to File Further Motions (#32); and

(17) Motion for Disclosure of Guidelines Sentencing Information Prior to Plea Agreement deadline (#33).

This 18th day of March, 1993.

Richard L. Voorhees

RICHARD L. VOORHEES, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CASE NO.: 4: 93-CR-01

UNITED STATES OF AMERICA,	)	
	)	**ORDER PERMITTING LIMITED**
vs.	)	**USE OF FIREARMS AND**
	)	**RETURNING FIREARMS**
ROBERT L. VANBUSKIRK,	)	
	)	
Defendant.	)	

THIS CAUSE, came on by Motion of the Defendant. The matter was heard by this Court on March 11, 1993. Present at the hearing on behalf of the defendant was Tom Bush of the Mecklenburg County law firm of Bush, Thurman & Wilson, P.A., and on behalf of the U.S. Government was Assistant U.S. Attorney, Kenneth Bell.

FINDINGS OF FACT

1. The defendant owns substantial acreage in Rutherford County on a 1200 acre parcel of land known as Fox Haven. Fox Haven consists of land owned by the defendant, in addition to various 10-20 acre parcels owned by others.

2. There exists on the property children, pets, cows, horses, llamas, and other livestock.

3. Running throughout the Fox Haven property and in adjacent areas, there exists a pack of 9-12 wild dogs.

4. In recent weeks, the wild dogs have attacked livestock on Fox Haven, attacked waterfowl, and killed livestock.

5. The defendant manages and protects, not only his own property, but the other acreage existing in Fox Haven Plantation.

6. The defendant is under indictment for money laundering and failure to file a cash reporting transaction document.

7. The defendant is out on a $2,000,000.00 secured bond, further secured by $100,000.00 cash, deposited with the Clerk of Court.

8. The standard pre-trial release set by this Court, prohibits the possession of a firearm by a defendant awaiting trial in this district.

9. The defendant desires to possess high powered rifles for purposes of protecting the livestock by shooting the dogs.

10. The government has no objection to the defendant being armed for the sole purpose of eradicating the dogs, as long as the

defendant possesses rifles for the sole purpose of eradicating the dogs and does not possess said weapons outside the 1,200 acres.

11. During the initial execution of a search warrant issued in this cause, various law enforcement agents, along with confiscating other documents and property, confiscated numerous rifles and pistols belonging to the defendant.

12. The defendant is a former Special Forces, Delta Force, Captain and is extensively trained in the safety and use of rifles.

13. The government has indicated no objection, to returning to the possession of the defendant, the pistols and rifles that were confiscated, subject to confirmation by law enforcement that said weapons are not illegal or stolen.

ORDER OF THE COURT

1. The defendant shall be permitted to arm himself while on Fox Haven Plantation for the sole purpose of eradicating the wild dogs, which are destroying livestock, pets, and placing children and others in fear.

2. The defendant, under no circumstances, shall be in possession of any firearm while he is off the premises of Fox Haven Plantation. Furthermore, he shall only arm himself while on Fox Haven Plantation when he is engaged in the actual hunting of the dogs.

3. The government shall make any determinations as to whether the guns of the defendant they presently possess are illegal or stolen on or before 2:00 p.m., March 19, 1993.

4. All weapons in the possession of law enforcement confiscated during the search, which are not illegal or stolen, shall be returned to the defendant at 3:00 p.m., March 19, 1993, at the offices of the Drug Enforcement Administration, Charlotte, North Carolina, where said weapons shall be surrendered to the defendant.

This the 16th day of March, 1993.

Paul B. Taylor
U.S. Judge Magistrate

lb:vanbuski\order

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing party in the foregoing matter with a copy of this pleading or document, by depositing a copy of the same in the properly addressed envelope in an official depository under the exclusive care and custody of the United States Post Office Department, addressed to the opposing party, and as prescribed by Rule 5 of the Rules of Civil Procedure.

To: Kenneth D. Bell, Esquire
Assistant U.S. Attorney
Charles R. Jonas Building
Room 221
401 West Trade Street
Charlotte, North Carolina 28202

This 12th day of March, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

lb:docs\certserv

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CASE NO.: 4: 93-CR-01

U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA,	)	
	)	
vs.	)	**MOTION TO COMPEL DISCOVERY DEADLINE AND MOTION TO COMPEL TRANSCRIPTION OF TAPES**
	)	
ROBERT L. VANBUSKIRK,	)	
	)	
Defendant.	)	

COMES NOW, the defendant, pursuant to Rule 16 of the Federal Rules of Criminal Procedure and sets forth as follows:

1. The agents executed a search warrant in the above-styled cause and removed thousands of pages of documents from the defendant, which are presently in the custody of the IRS and the Drug Enforcement Administration.

2. The government is attempting to copy said documents, but the first two boxes of documents that were copied, were not copied in the order in which they were seized and the defendant is totally and completely unable to prepare a defense.

3. The documents are continuing to be copied, but not in any timetable fashion and, upon information and belief, defendant's case may be tried in May. The number of documents would fill the back of a quarter ton pickup.

4. Each and every document is necessary for the defense, in that, the defendant is charged with money laundering and these documents will be necessary to show the legality of how proceeds were received.

5. There exists 5 to 6 taped conversations between defendant and Government DEA and IRS agents, that will corroborate a defense. The DEA keeps promising the tapes, but are "understaffed". Defendant needs those tapes now. It is not the agents fault, but clerical problems. Nevertheless, defendant needs the tapes.

6. At calendar call the Honorable Judge Osteen, visiting Judge, ordered the government to provide a date certain for all copying to be completed. To date, same has not been done.

WHEREFORE, the defendant moves the Court for an Order as follows:

a. That the Court ascertain from the government, ex parte, if necessary, through Ken Bell, a date certain when all documents will be completely xeroxed, if not returned in the appropriate order in which said documents were seized, including copying all writings in and outside manila files, in which other documents were contained.

b. Requiring the government to recopy the first two boxes of documents so they will be in an order which defendant can use them.

c. Setting a date certain when defendant will have the tapes.

This the 10 day of March, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

lb:vanbuski\motcomp

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing party in the foregoing matter with a copy of this pleading or document, by depositing a copy of the same in the properly addressed envelope in an official depository under the exclusive care and custody of the United States Post Office Department, addressed to the opposing party, and as prescribed by Rule 5 of the Rules of Civil Procedure.

To: Kenneth D. Bell, Esquire
Assistant U.S. Attorney
Charles R. Jonas Building
Room 221
401 West Trade Street
Charlotte, North Carolina 28202

This 10 day of March, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

lb:docs\certserv

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CASE NO.: 4: 93-CR-01

U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA,	)	
	)	**NOTICE OF DEFENSE BASED**
vs.	)	**UPON MEDICAL CONDITION**
	)	
ROBERT L. VANBUSKIRK,	)	
	)	
Defendant.	)	

COMES NOW, the defendant in this cause and notifies the Government, that it may use, as a portion of its defense, the defendant's mental condition. The defendant has been diagnosed with a post-traumatic stress disorder for which he takes significant medication. The defendant was in long-term combat in Vietnam, wounded on numerous occasions, is regularly treated by the Veterans Administration, and is given prescribed medications for this disorder. Additional information will be provided as soon as appropriate medical records are gathered.

This the 4 day of March, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

lb:vanbuski\notdef

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing party in the foregoing matter with a copy of this pleading or document, by depositing a copy of the same in the properly addressed envelope in an official depository under the exclusive care and custody of the United States Post Office Department, addressed to the opposing party, and as prescribed by Rule 5 of the Rules of Civil Procedure.

To: Kenneth D. Bell, Esquire
Assistant U.S. Attorney
Charles R. Jonas Building
Room 221
401 West Trade Street
Charlotte, North Carolina 28202

This 9th day of March, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

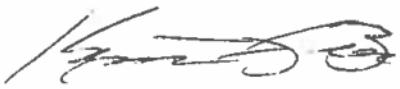
lb:docs\certserv

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 1993, the foregoing Notice was duly served upon the defendant herein by mailing a copy thereof, postage prepaid and properly addressed to, defendant's attorney of record, as follows:

Mr. Tom Bush
Attorney at Law
1201 East Boulevard
Charlotte, NC 28203

THOMAS J. ASHCRAFT
UNITED STATES ATTORNEY



KENNETH D. BELL
ASSISTANT UNITED STATES ATTORNEY

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CASE NO.: 4: 93-CR-01

93 MAR -8 P 12:27
U.S. DISTRICT COURT
W. DIST. N.C.

UNITED STATES OF AMERICA,	)	
	)	
vs.	)	**EMERGENCY MOTION TO ALLOW USE OF A FIREARM**
	)	
ROBERT L. VANBUSKIRK,	)	
	)	
Defendant.	)	

COMES NOW, the defendant, Robert VanBuskirk, in the above styled cause and sets forth as follows:

1. The defendant is presently under indictment in the Western District of North Carolina, Shelby Division, for money laundering and failure to file a Form 8300.

2. The defendant is out on bond with a $100,000.00 cash deposit with the Clerk of Court, plus $2,000,000.00 secured. The standard Pre-trial Release Order disallows possession of a firearm by defendant.

3. The defendant runs approximately 1,200 acres of property. He has a home and 56 acres on this property, plus manages the property for other lot owners.

4. There are small children, horses, young colts, cows, llamas, and pets on the property. There exists a wild pack of dogs who are presently roaming the property, that have in the past 3

days, attacked and killed livestock, along with threatening the defendant's 2 small children.

5. As a result of the defendant being on bond, the standard application prohibiting firearms of a defendant is presently in effect.

6. The defendant is a former Special Forces Army Captain and is trained in the use of firearms, has knowledge of same, and is trained in the safe use of these weapons.

7. In order to hunt down the wild dogs, the defendant is in need of his rifles, which were confiscated by the DEA when they executed the arrest of the defendant.

8. The defendant is not charged with any firearm violations nor any illegal use of a firearm.

9. The defendant has a longtime, good reputation in the Rutherfordton community, is well known, and is not a danger to others. Attached hereto are exhibits of the killings of the livestock.

10. References to corroborate what is occurring on the farm by the wild dogs and the defendant's reputation can be contacted as follows:

a. Dr. Stuart Bonner 704-287-5867.

b. Dr. Connie Ross - 704-287-5867.

c. Rudolph Parton - 704-287-3871.

d. Austin Morrissey - 704-286-0143.

e. Dr. Joanne Close - 704-286-0143.

f. Joe Martin - 704-286-0708.

11. Numerous persons who own parcels in the area depend upon the defendant to protect their property, as they are not full time residents. Those persons include Vick Russell - 703-953-2169, Pauline Harper - 703-731-0997, Robert Keeck - 206-297-4024, David Chambers - 704-983-6116, Don Dalton - 704-287-2757, Joe and Kathy Hartley - 704-286-1661, and numerous others.

12. If this Court does not allow the defendant to have long guns and the return of said guns, along with the scopes, then the dogs will continue to threaten the livestock, children, and other animals on the property.

13. There is no other person that can be depended upon, 24

hours a day, to guard the property and hunt down the wild dogs. In addition, defendant will lose substantial resources and income. The DEA has already seized in excess of a million dollars in assets.

14. Defendant's children and wife are literally terrified of the dogs.

15. All weapons returned will be kept at defendant's main house and used only for killing the dogs on the property.

WHEREFORE, defendant moves the Court for an Order returning weapons seized by the DEA (upon information and belief, there is no basis for holding said weapons, in any event) and allowing the defendant to be armed while on the 1,200 acres known as "Foxhaven Plantation" and to shoot said guns where necessary to kill the wild dogs.

This the 3 day of March, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

lb:\vanbuski\motion

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing party in the foregoing matter with a copy of this pleading or document, by depositing a copy of the same in the properly addressed envelope in an official depository under the exclusive care and custody of the United States Post Office Department, addressed to the opposing party, and as prescribed by Rule 5 of the Rules of Civil Procedure.

To: Kenneth D. Bell, Esquire
Assistant U.S. Attorney
Charles R. Jonas Building
Room 221
401 West Trade Street
Charlotte, North Carolina 28202

This 9 day of March, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

lb:docs\certserv

Exhibit A

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CASE NO.: 4: 93-CR-01

UNITED STATES OF AMERICA,	)	
	)	
vs.	)	JOINT MOTION TO CONTINUE
	)	
ROBERT L. VANBUSKIRK,	)	
	)	
Defendant.	)	

COMES NOW, the defendant, Robert L. VanBuskirk, and the United States of America, by and through their attorneys, Tom Bush for the defendant and Kenneth Bell on behalf of the United States of America and requests this Court continue this matter from the March calendar, until the June, Shelby Division calendar or thereafter, and as grounds therefore, set forth as follows:

1. This case is a monumental mess of paperwork.

2. Law enforcement agents seized, on behalf of the defendant, literally thousands and thousands of pages of documents.

3. The government is earnestly attempting to photocopy said documents and to provide them to the defendant, but, in any event, that will take a significant amount of time, along with the opportunity for both parties to review the documents and prepare.

4. There are no co-defendants in this case.

5. The defendant is out on bond.

6. There are numerous tape recorded transcripts of the defendant, which have yet to be transcribed and defense counsel has not yet been provided with a copy of all statements of the defendant.

7. The U.S. Attorney's "Open File Policy" is available to defense counsel, but the "open file" has not yet been created, in that, the agents are still attempting to put together the necessary documents to provide to the U.S. Attorney.

WHEREFORE, both the defendant and the United States move the Court for an Order removing this from the Asheville, March calendar.

Counsel for the defendant, Tom Bush, certifies that he has spoken personally with Ken Bell, Assistant U.S. Attorney, and he desires this joint motion and authorizes this Court to speak ex-parte with Ken Bell, if there are any questions at 704-344-6461.

This the 19 day of February, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing party in the foregoing matter with a copy of this pleading or document, by depositing a copy of the same in the properly addressed envelope in an official depository under the exclusive care and custody of the United States Post Office Department, addressed to the opposing party, and as prescribed by Rule 5 of the Rules of Civil Procedure.

To: Kenneth D. Bell, Esquire
Assistant U.S. Attorney
Charles R. Jonas Building
Room 221
401 West Trade Street
Charlotte, North Carolina 28202

This 16 day of February, 1993.

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

FILED
FEB 16 PM 3:49
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA)
)
v.) MOTION NO. 25
)
)
ROBERT L. VANBUSKIRK)

MOTION FOR DISCLOSURE OF GUIDELINES SENTENCING INFORMATION PRIOR TO PLEA AGREEMENT DEADLINE

NOW COMES the defendant pursuant to Rule 16 of the Federal Rules of Criminal Procedure, the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, the principles of Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, the Miscellaneous Rules of this Court requiring that the government and defendants file plea agreements twelve days prior to the commencement of the term during which a matter is calendared, and the Federal Sentencing Guidelines as updated through the date of this motion, and hereby moves that the Court issue an order requiring the Government to disclose the following to the defendant within a reasonable time but not less than ten days prior to the deadline established by this court for filing plea agreements between defendants and the government:

1. All conduct which the government contends or will contend is relevant to determine the guidelines range applicable to this defendant including but not limited to:

a. All acts and omissions committed or aided and abetted by the defendants, or for which the defendant would be

otherwise accountable, that occurred during the commission of the offense charged, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense, or that otherwise were in furtherance of that offense;

b. Solely with respect to offenses of a character for which guidelines section 3D1.2(d) of the Federal Sentencing Guidelines would require grouping of multiple counts, all such acts and omissions that were part of the same course of conduct or common scheme or plan as the offense charged;

c. All harm or risk of harm that resulted from the acts or omissions specified in subsections (a) and (b) above, if the harm or risk was caused intentionally, recklessly or by criminal negligence, and all harm or risk that was the object of such acts or omissions; and

d. The defendant's state of mind, intent, notice, and purpose in committing the offense.

2. Any information which the government contends or will contend is relevant to determine the appropriate sentence to impose within the applicable guideline range or in determining whether a departure from said range is warranted including, but not limited to, any information concerning the background, character and conduct of the defendant.

3. Whether any person accountable for any of the offenses charged or any other offenses would be, pursuant to guidelines

section 1B1.8 entitled to quasi-guidelines use immunity from information otherwise relevant to sentencing and, if such persons would be so entitled, the names of such persons and the information otherwise relevant to sentencing.

4. For those offenses charged which involved the unlawful manufacturing, importing, exporting, trafficking and/or the possession of a controlled substance, any information which the government contends or will contend would show that the defendant possessed a firearm or other dangerous weapon during the commission of these offenses.

5. Whether the government has any information regarding the level of purity of the controlled substances allegedly involved in this indictment or involved in any offense relevant to sentencing which the government contends, or will contend, pursuant to paragraph 9 of the commentary to guidelines section 2D1.1 will warrant an upward departure or a sentence at the high end of the defendant's purported sentencing range.

6. For those counts involving conspiracy to commit transactions in controlled substances, information regarding all conduct of the defendant which the government contends or will contend was in furtherance of the conspiracy and/or conduct of co-conspirators which the government contends or will contend was in furtherance of the conspiracy and which was known to the defendant or was reasonably foreseeable by the defendant.

7. For those counts involving transactions in controlled substances where there was no drug seizure, any information which

the government contends, or will contend, is relevant to showing the approximate quantity of controlled substances pursuant to note 2 of guidelines section 2D1.4.

8. Concerning victim related adjustments to the base offense level applicable to this defendant, any information which the government contends, or will contend, constitutes evidence that the offenses involved:

a. A vulnerable victim as is defined in guidelines section 3A1.1;

b. An official victim as is defined in guidelines section 3A1.2;

c. The restraint of a victim as is defined in guidelines section 3A1.3.

9. Information the government contends, or will contend, establishes that the defendant's conduct in the offense charged was that of someone occupying an aggravating role in said offense as is defined in guidelines section 3B1.1 (a) (b) or (c), or information which would establish that the defendant's conduct was that of someone occupying a mitigating role as defined in guidelines section 3B1.2.

10. Information the government contends, or will contend, negates evidence that the defendant's conduct in the offense charged was that of someone occupying a mitigating role in said offense as is defined in guidelines section 3B1.2.

11. Information the government contends, or will contend, establishes that the defendant either abused a position of trust

or used a special skill in the commission of the offense of charge as those terms are defined in guidelines section 3B1.3.

12. Information which the government contends, or will contend, establishes that the defendant's conduct relevant to the offense charged or other offense involved a wilful obstruction or impediment to the administration of justice or an attempt to obstruct or impede the administration of justice as is defined in guidelines section 3C1.1.

13. Any information which the government contends is relevant to determine the offense level on this indictment's multiple counts which are applicable to this defendant as is set forth in guidelines section 3D1.1.

14. Information which the government contends or will contend, establishes that the defendant accepted responsibility for the offense or offenses charged as is defined in guidelines section 3E1.1 or information which the government contends, or will contend, negates the establishment or such an acceptance of responsibility.

15. Any information which the government possesses or which the government can obtain by due diligence concerning the defendant's criminal history as is defined in guidelines section 4A1.1 and/or 4A1.2.

16. Any information which the government contends, or will contend, establishes that the criminal history category applicable to this defendant does not adequately reflect the seriousness of his past criminal conduct or the likelihood that he will commit

other crimes such that a departure from the applicable guidelines range would be warranted as is provided in guidelines section 4A1.3.

17. Information which the government contends, or will contend, establishes that this defendant is a career offender as is defined in guidelines section 4B1.1 and/or 4B1.2.

18. Information which the government contends, or will contend, establishes that this defendant derived a substantial portion of his income from a pattern of criminal conduct which includes the offense charged as is defined in guidelines section 4B1.3.

19. If the Government intends to use hearsay or other out-of-court declarations of a confidential informant as any portion of its evidence in attempting to establish facts relevant to sentencing, the defendant additionally moves that the court order:

a. That the government provide notice of the intent to use such matters;

b. That the government provide the information which it contends demonstrates good cause for nondisclosure of the identity of such an informant;

c. That the government provide the information which it contends demonstrates that these declarations are sufficiently established by means other than the declarations.

Pursuant to this motion, the defendant respectfully requests that the Court issue it's order requiring disclosure by the

Government of the items specified above within a reasonable time but not less than ten days prior to the deadline established by this Court for filing plea agreements between defendants and the government and to further order that the failure to timely disclose the requested matter will result in said matter's exclusion form consideration at sentencing.

This the 15 day of Feb, 1993.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISON
4: 93CR01

UNITED STATES OF AMERICA)
)
Plaintiff)
)
vs.) MOTION NO. 24
)
ROBERT L. VANBUSKIRK)
)
Defendant)

MOTION FOR LEAVE TO FILE FURTHER MOTIONS

NOW COMES Defendant, by and through counsel, and moves this Honorable Court for leave to file such further Motions as may be appropriate, after this Defendant has had an opportunity to inspect any material which this Court may order produced pursuant to any Motions simultaneously filed herewith, such further Motions to include, but not be limited to, the supplementing of any Motions now filed and such Motion to Suppress as may be called for.

RESPECTFULLY submitted, this the 15 day of Feb, 1993.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

93 FEB 15 PM 3:49
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA Plaintiff vs. ROBERT L. VANBUSKIRK **Defendant**	MOTION NO. 23

MOTION REQUIRING GOVERNMENT TO ADMIT OR DENY THE EXISTENCE OF OTHER INVESTIGATION AND POTENTIAL INDICTMENTS

COMES NOW the Defendant, by and through Counsel, and moves this Honorable Court for an Order requiring the Government to admit or deny the existence of other investigations and potential indictments of him and, as grounds therefor, the undersigned would show as follows:

1. The Department of Justice has an internal policy against dual prosecutions. The policy is set forth in the United States Attorney's Manual, 9-2.142:

> ...a Federal prosecution may be had after a state prosecution of the same defendant for the same act or acts only if a recommendation demonstrating compelling interests for a Federal prosecution is made to the appropriate Assistant Attorney General.

And at 9-2.143:

> ...If a prospective defendant has been Federally prosecuted for an offense and a United States Attorney desires to further prosecute him for another offense arising from the same transaction, a recommendation...shall be submitted to the Assistant Attorney General for approval prior to initiating prosecution...

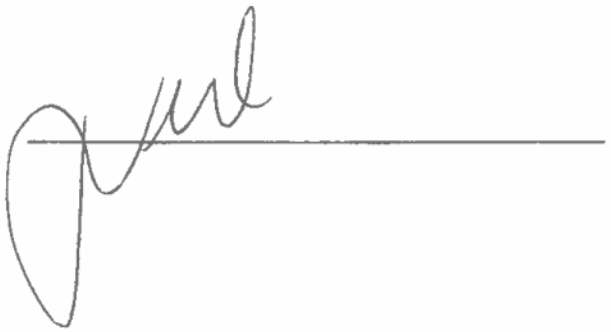
2. The policy derives its name from Petite v. United States, 361 U.S. 529 (1960), wherein a Defendant was prosecuted by the United States in two separate judicial districts for offenses arising out of a single transaction. When the case came before the Supreme Court, the Solicitor General moved to have the second judgment vacated on the basis of the Government's policy against dual prosecutions. The Court's per curiam opinion, which remanded with instructions that the Government be allowed to dismiss the indictment, was the first judicial recognition of the policy.

3. The undersigned suspects that there may be pending at this time, in other jurisdictions, investigations of the Defendant which arise out of the same transaction which is described in the indictment. It is also the belief of the undersigned that the Defendant may be indicted in other jurisdictions for the transaction described in the indictment.

4. The Defendant is entitled to know of the existence of any other investigation which might lead to an indictment for the same transaction in order that appropriate motions to dismiss may be filed. Furthermore, the Defendant is entitled to know of any communications or negotiations between prosecutors and agents in this district with others in districts where he may later be indicted in order that any attempts by the officials in the various districts to time indictments so as to avoid violating the letter of the Petite policy but yet violating its spirit may be brought to the attention of the Court.

WHEREFORE, the Defendant prays that this Honorable Court will enter its Order requiring the Government to admit or deny the existence of other investigations and potential indictments and to afford the Defendant a full hearing on this matter.

This the 15 day of February, 1973.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA

Plaintiff

vs.

ROBERT L. VANBUSKIRK

Defendant

MOTION NO. 16

MOTION FOR ORDER REQUIRING GOVERNMENT TO STATE WHETHER IT INTENDS TO CALL CONFIDENTIAL INFORMANT AND INCORPORATED MEMORANDUM OF LAW

NOW COMES the Defendant, by and through counsel, and moves this Honorable Court for an order requiring the Government to state whether or not it intends to call a confidential informant at trial and as grounds therefore the Defendant would show the following:

1. This case involves the use of a confidential informant who purportedly participated in some, if not all, of the events which led to the Defendant's arrest and indictment.

2. Defendant is entitled to know, as a matter of due process of law, and in order to obtain effective assistance of counsel as well as compulsory attendance of witnesses, whether the government intends to utilize the confidential informant as a witness at trial herein.

3. At this junction the Defendant is simply asking the Court to direct the Government to state whether or not it intends to utilize the confidential informant as a trial witness. If the Government states that it does not intend to utilize the

confidential informant at the time of trial, then Defendant must make a decision as to whether or not it should file an appropriate Motion to Compel Production of the Confidential Informant's Name and Address based on applicable and prevailing law. In the meantime the Defendant is obliged to at least make a preliminary request as to whether or not the informant will be called at trial. Absent such a preliminary request the Defendant will not be entitled to claim prejudice in the event of an adverse ruling. See United States v. Hayes, 477 F.2d 686 (10th Cir. 1973); United States v. Ariza-Ibara, 651 F.2d 2 (1st Cir. 1981).

Based on the foregoing, the Defendant prays that this Honorable Court will enter its Order directing the Government to state whether or not it intends to call a confidential informant as a witness at the time of trial.

This, the 16 day of Feb, 1993.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

93 FEB 10 P 2:53
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA)
Plaintiff)
v.)
ROBERT L. VANBUSKIRK)
Defendant)

MOTION NO. 15

MOTION FOR PRODUCTION OF PSYCHIATRIC EVALUATION AND OTHER EVIDENCE OF EMOTIONAL DISORDER OF ANY GOVERNMENT WITNESS AND INCORPORATED MEMORANDUM OF LAW

NOW COMES Defendant, by and through counsel, and files this Motion for Production of Psychiatric Evaluations, tests, or reports of any Government witness or potential witness. This request includes any information or knowledge in the hands of the Government, or which could be obtained by the exercise of reasonable diligence by the Government, which would in any manner show that any of the Government's potential witnesses may be suffering from delusions, emotional difficulty, alcoholism, narcotics addiction, the abuse or use of controlled substances of any type, psychological or psychiatric imbalance or any other physical or mental disability that might possibly affect, impair or influence the quality of competency of the potential witnesses' testimony or that in any way could reasonably affect this witness's credibility or memory. As grounds therefore, Defendant would show as follows:

1. A Government witness may have a history of mental or

emotional treatment, disorder or disease and/or drug use or abuse. If so, the Government ought to be required to state full details and particulars thereof, including the name and address of any psychiatric hospital, psychiatrist, psychologist, and any treatment, in- or out-patient care, at an in- or out-patient facility. See Brady v. Maryland, 373 U.S. 83(1963).

The jury will be instructed to weigh and evaluate the various witnesses' credibility. See Devitt & Blackmar, Federal Jury Practice and Instructions, Section 17.01-11, 17.15-17. If any Government witness has or has had a mental disease, emotional disorder or mental disorder which would interfere with his or her ability to know and remember the facts about which he or she testifies, or if any witness has a mental or emotional condition which would materially affect his testimony (e.g. delusions of grandeur, pathological liar), Defendant and his counsel are entitled to know this information in order to adequately and properly prepare for trial. See Government of Virgin Islands v. Hendricks, 476 F.2d 776 (3rd Cir. 1973) (Drug Instructions).

3. In United States v. Lindstrom, 698 F.2d 1154 (11th Cir. 1983), the Court reversed the defendant's convictions, holding that the trial court improperly restricted cross-examination of the chief witness for the Government as to the witness' history of psychiatric disorders and further improperly denied to the defendants access to documents and medical records pertaining to the witness' psychiatric history. See also Greene v. Wainwright, 634 F.2d 272 (5th Cir. 1981)

4. Additionally, this Court has general supervisory powers to

grant this Motion. The denial of the Motion will clearly prejudice the Defendant and as a result, Defendant will be denied due process of law.[1] Granting the Motion will not hamper the fair administration of justice.

5. Defendant's Motion seeks not only witnesses with current medical, mental, or physical conditions which would impair their testimony or impeach their credibility, but, also, any witness who has had a previous history of mental or emotional disorder, and/or drug abuse or addiction.

WHEREFORE, the Defendant prays for such Order as is just and proper.

This the 16 day of [illegible], 1993.

[illegible]

---

[1]In Chavis v. State of North Carolina, 637 F.2d 776 (3rd Cir. 1980), the Court held that the Trial Judge's failure to require the prosecutor to produce the State's witness' psychiatric records denied the Defendant due process of law.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 95CR01

UNITED STATES OF AMERICA)
)
Plaintiff)
)
vs.) MOTION NO. 13
)
ROBERT L. VANBUSKIRK)
)
Defendant)
)

MOTION FOR STATEMENTS OF INDICTED AND UNINDICTED CO-DEFENDANTS AND ALLEGED CO-CONSPIRATORS

NOW COMES the Defendant, by and through counsel, and moves this Honorable Court to order the Government, pursuant to Rule 16(a)(1)(C), of the Federal Rules of Criminal Procedure, to disclose any and all statements (pre- or post-arrest) of any indicted or unindicted Co-Defendants and alleged Co-Conspirators whether written by them or transcribed, recorded, or summarized by agents of the Government. This request includes statements made by any of the co-Defendants that were overheard by government agents by any means and recorded, transcribed or summarized by said agents. The Defendant alleges that the production of these statements is necessary so he can determine if a Motion for Severance and/or a Burton Motion are viable and because the Government may attempt to introduce them in a joint trial. Thus, production of said statements is as essential to Defendant's preparation for trial as is production and discovery of his own statements.

In the case of United States v. Jackson, 757 F.2d 1486, 1491 (4th Cir. 1985), the Fourth Circuit Court of Appeals held that a "Defendant is entitled to disclosure of statements of Co-Conspirators if the Co-Conspirator is not a prospective witness and disclosure does not necessarily reveal sensitive information." The Court's reasoning in Jackson was predicated upon the lack of reliability of Co-Conspirator statements introduced pursuant to Rule 801(d)(2)(E). The Court noted that "by giving the Defendant notice of the statements, he may properly investigate their origin and if the grounds exist, attempt to discredit the statements." Id. In the case sub judice, the Defendant must be given an opportunity to examine any statements made by Co-Defendants or alleged Co-Conspirators so as to allow proper rebuttal at trial.

WHEREFORE, Defendant respectfully prays that this Honorable Court will grant the within Motion.

This the 15 day of Feb, 1993.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA Plaintiff vs. ROBERT L. VANBUSKIRK Defendant	MOTION NO. 12

MOTION TO REQUIRE GOVERNMENT TO SUBMIT DEFENDANT'S PRE- AND POST-ARREST STATEMENTS PRIOR TO TRIAL AND INCORPORATED MEMORANDUM OF LAW

NOW COMES the Defendant, by and through counsel, and respectfully moves this Honorable Court for the entry of an Order requiring the Government to submit to the Defendant all of Defendant's pre- and post-arrest statements, prior to trial. The request includes all oral or written statements made by Defendant, whether written by him or transcribed, recorded, or summarized by agents of the Government, that are within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the United States Attorney. This request includes statements made to witnesses other than Government agents at the time the Defendant was in custody, as well as the exact words attributed to the Defendant which caused the Government to conclude that the Defendant did commit the offenses alleged in the indictment. Also included are any statements by the Defendant that were overhead by Government agents by any means and recorded, transcribed, or

summarized by said agents. Such evidence shall include but shall not be limited to:

(a) Any statements made by the Defendant in writing after his indictment;

(b) Any statements made by the Defendant in writing prior to his indictment;

(c) Any statements made by the Defendant which were tape recorded prior to or after his indictment;

(d) Any oral statements made by the Defendant to, or overheard by, a law enforcement officer or other agent of the Government after his indictment which were the subject of a verbatim or summarized report or written memorandum by the officer or agent;

(e) Any oral statements made by the Defendant or overheard by a law enforcement officer or other agent of the Government prior to his indictment which were the subject of a verbatim or summarized report or written memorandum by said officer or other agent of the Government;

(f) Any written report summarizing or transcribing any tape recorded conversation including the Defendant regardless of whether the conversation occurred prior to or after Defendant's indictment;

(g) Any oral statements made by the Defendant to or overheard by a person other than a law enforcement officer after his indictment which were the subject of a verbatim or summarized report or written memorandum either by the

person hearing the statements or by a law enforcement officer or other individual receiving the recital of the Defendant's statements; and

(h) Any oral statements made by the Defendant to, or overheard by, a person other than a law enforcement officer prior to his indictment which are relevant to the above-entitled matter and which were the subject of a verbatim or summarized report or written memorandum, either by the person hearing the statements or by a law enforcement officer or other individual receiving the recital of the Defendant's statements.

The production of these statements is based on the following grounds:

1. Rule 16, Federal Rules of Criminal Procedure, requires the Government to deliver to the Defendant prior to trial all post-arrest statements attributed to the Defendant.

2. The United States Attorney may not receive all reports from all law enforcement officers involved in a case investigation and, thus, the Defendant does not receive these reports until just prior to trial and, in some instances, not until after a particular witness is about to testify or has completed testimony. Under these circumstances it is virtually impossible for the Defendant to adequately and properly prepare for trial, particularly when, while in trial, the Defendant learns for the first time that a law enforcement officer has attributed a particular statement to the Defendant. If the Defendant's right to due process of law and

effective assistance of counsel as well as the Defendant's right to confront and cross-examine the Government's evidence are to have meaningful purpose, then the Defendant ought to have the right to receive, well in advance of the trial date, summaries, or preferably exact reproduction of, all statements which the Government intends to introduce at trial and/or all statements which the Government attributes to the Defendant during the pre-arrest and investigative stages of the proceedings. United States v. Caldwell, 543 F. 2d 1333, 1352 (D.C. Cir. 1974), cert. denied, 423 U.S. 1087 (1974); Davis v. United States, 413 F.2d 12265, 1231 (5th Cir. 1969); see also, United States v. Copen, 378 F. Supp. 99 (S.D.N.Y. 1974). These statements are most frequently found in investigative reports which the Government maintains fall within the purview of the Jencks Act, 18 U.S.C. Section 3500. These statements are usually embodied within the formal investigative reports prepared by the investigative agency or agencies which are involved in the Defendant's case.

A defendant is clearly embarrassed in the preparation of his defense if suddenly, either immediately prior to trial or while actually in trial, he discovers that the Government contends that the Defendant made a particular statement during the investigative proceedings which is inculpatory in nature. The delay of the receipt of these reports and statements by the Defendant until the eve of trial precludes the Defendant from being able to adequately investigate and attempt to recollect whether or not these statements were, in fact, made. Often third parties, not

necessarily indicted, are present when these statements are made. Sometimes statements of this nature are taken out of context.

5. Production of these pre-arrest statements will enable the Defendant to better and properly prepare for trial, afford him due process of the law and maximize utilization of the plethora of constitutional rights embodied in the Fifth and Sixth Amendments to the United States Constitution. In addition, production of these statements prior to trial will enable the Defendant to consult with co-defendants to determine whether any co-defendant who was present at the time a statement was allegedly made, recollects the statement as accurate or not or recalls that the statement was taken out of context or made under different circumstances than will be testified to at trial. If this occurs, then the Defendant certainly has the right to seek a Byrd v. Wainwright, 428 F.2d 1017 (5th Cir. 1970), severance in order to utilize the testimony of the co-defendant. Similarly, production of the pre-arrest statement and full disclosure of the circumstances under which it was made, including the names of unindicted persons who were present when said statement was made will enable the defendant adequate time to attempt to locate these third parties to determine whether or not they recollect whether the statement was made and if not, whether their recollection of the statement is different, and then to determine the availability of these parties for use as witnesses at trail.

WHEREFORE, Defendant prays that this Honorable Court will enter its Order directing the Government to produce well in advance

of the trial date all pre- and post-arrest statements made by and/or attributed to the Defendant regardless of whether or not said statement was made to a person then known by the Defendant to be a law enforcement officer.

This the 15 day of Feb 19 93

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA)
)
v.) MOTION NO. 11
)
)
ROBERT L. VANDUSKIRK)

MOTION FOR PRE-TRIAL HEARING TO DETERMINE WHETHER GOVERNMENT HAS SUFFICIENT INDEPENDENT EVIDENCE OF CONSPIRACY TO WARRANT ADMISSION OF ALLEGED CO-CONSPIRATOR STATEMENTS.

NOW COMES the defendant and moves this Honorable Court to conduct a pre-trial hearing to determine whether the Government has sufficient independent evidence of a conspiracy to warrant the admission of alleged co-conspirator statements under Rule 801(d)(2)(E), Federal Rules of Evidence. As grounds therefore, the defendant states:

1. Out-of-court statements made by co-conspirators during the course of and in the furtherance of the conspiracy are not hearsay and are admissable under Rule 801(d)(2((E) of the Federal Rules of Evidence.

2. In order for these statements to be admitted against a co-conspirator under this exception to the hearsay rule, the District Court must find the existence of and the defendant's participation in the conspiracy by a fair preponderance of the evidence. United States v. Chindawongse, 771 F.2d 840, 844 (4th Cir. 1985); United States v. Scott, 730 F.2d 143, 148 (4th Cir. 1984), cert.den.; 469 U.S. 1075, (1985). Pursuant to the relevant jurisprudence of the Fourth Circuit, the trial court has the option

of either conditionally admitting out of court declarations subject to the government's subsequent showing of foundation or conducting a pretrial hearing to determine if such statements are admissible. U.S. v. Hines, 717 F.2d 1481, 1488 (4th Cir. 1983). But see U.S. v. James, 590 F.2d 575 (5th Cir. 1979), cert. denied, 442 U.S. 917 (1979) holding that it may be error to admit out of court declarations absent a pretrial showing of admissibility when the purported later foundation fails to satisfy Rule 801(d)(2)(E).

3. A pre-trial hearing provides the fairest mechanism to determine if the Government does have sufficient independent evidence of a conspiracy involving this defendant. To delay this determination until trial could severely prejudice the defendant and may permit the otherwise improper introduction of evidence at trial. And, the Supreme Court has questioned whether a cautionary instruction asking that the jury disregard previously admitted evidence can result in a truly fair proceeding. See Jackson v. Denno, 378 U.S. 368 (1964). The pre-trial hearing requested herein will provide the necessary safeguard against the improper introduction of inadmissible statements which under certain circumstances can lead to due process violations and the concomitant costly re-trial

This the 15 day of February, 1993.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA)
)
Plaintiff)
)
vs.) MOTION NO. 10
)
)
ROBERT L. VANBUSKIRK)
Defendant)

MOTION TO COMPEL GOVERNMENT TO ANNOUNCE, IN ADVANCE OF TRIAL, WHETHER IT INTENDS TO USE POST-ARREST AND/OR POST CONSPIRACY STATEMENTS (REACTED OR OTHERWISE) OF CO-DEFENDANTS AND INCORPORATED MEMORANDUM OF LAW

NOW COMES the Defendant, by and through counsel, and respectfully moves this Honorable Court for the entry of an Order directing the Government to announce well in advance of the trial whether it intends to use post-arrest or post-conspiracy statements (reacted or otherwise) of Co-Defendants and/or alleged Co-Conspirators. As grounds therefore, Defendant would show as follows:

1. Several people have been arrested in this Indictment. Defendant may have made a statement following his arrest. It is likely that other co-defendants and/or arrestees likewise may have made statements. Thus far, Defendant has not received copies of any defendant's statement. Defendant has no way of knowing whether other defendants have made statements with respect to the allegations in this Indictment which purport to either inculpate or exculpate him. Defendant is entitled to know now (not during trial) of the existence vel non of such statements and whether the

Government intends to use any such statements.

2. As this Court well knows, absent a prior announcement by the Government, it is likely that a Burton v. United States, 391 U.S. 123 (1968), problem may arise during trial. The purpose of pre-trial motions is to eliminate as much as possible evidentiary and discovery problems prior to the commencement of the trial.

3. Even a "properly" reacted statement may, in a close case result in reversible error if admitted at trial. See United States v. Danzy, 594 F.2d 905 (2nd Cir.), cert. denied, 99 S.Ct 2179 (1979). Defendant is entitled to know in advance what evidence will be presented against him in order to avoid "trial by ambush." See United States v. James, 495 F.2d 434, 436 (5th Cir. 1974); see also, United States v. Herberman, 583 F.2d 222 (5th Cir. 1978).

4. Granting the within Motion will not prejudice or hamper Government. Denying the within Motion will preclude the Defendant from meaningfully exercising his right to effective assistance of counsel and his right to confront and cross-examine the Government's case against him.

WHEREFORE, the Defendant prays that this Honorable Court will enter its Order directing the Government to announce in advance of trial whether it intends to use post-arrest or post-conspiracy statements (reacted or otherwise).

This the 15 day of Feb, 1983.

_____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA Plaintiff vs. ROBERT L. VANBUSKIRK Defendant	)	MOTION NO. 9

MOTION FOR GOVERNMENT AGENTS TO RETAIN ROUGH NOTES AND INCORPORATED MEMORANDUM OF LAW

NOW COMES the Defendant, by and through counsel, and moves this Honorable Court to enter an Order requiring all Government law enforcement officers[1] who investigated the charges in this and related cases to retain and preserve all rough notes, memoranda, and writing of any form taken as part of their investigation of the above-captioned matter notwithstanding whether or not the contents of the said notes are incorporated in official records. This Motion is made so that the Trial Court can determine whether disclosure of the said notes is required under Brady v. Maryland, 373 U.S. 83 (1963), or the "Jencks" Act (Title 18, United States Code, Section 3500).

[1]The phrase "all Government law enforcement officers" is intended in the context of this Motion to include all Government agencies, including but not limited to Internal Revenue Service, United States Customs Service, Postal Inspectors, Federal Bureau of Investigation, Drug Enforcement Administration, the Comptroller's Office, as well as any other investigative (Local, State and Federal) offices, Officers, agencies, and agents. Only the Government knows the existence of all Local, State and Federal agencies involved in the case.

1. The Defendant relies on the case of United States v. Harrison, 524 F. 2d 421 (D.C. Cir. 1975), which held:

a. The decision whether rough interview notes taken by agents of the FBI in interviewing eyewitnesses are discoverable is for the Court, and not the Government to make.

b. The determination as to what constitutes a producible "statement" under the Jencks Act is for the Court, not the Government or one of its agents. 18 U.S.C.A. Section 3500, 3500 (e).

2. Rough, handwritten notes taken by agents of the Government in interviewing witnesses are potentially discoverable materials required to be preserved and produced even if the notes were not discoverable under the Jencks Act, and the Government's practice of destroying the notes after preparation of the witness interview report is not justified on the grounds that preservation of the notes would impose an intolerable burden on the Government or that all of the information was preserved in the report. 18 U.S.C.A. Section 3500.

3. See, also United States v. Maynard, 476 F. 2d 1170, 176-78 (D.C. Cir. 1973) and United States v. Bundy, 472 F.2d 1266, 1267 (D.C. Cir. 1872). In the case of United States v. Terrell, 474 F.2d 872,877 (2d Cir. 1973), The Second Circuit Court of Appeals has held that the Jencks Act imposes no duty on law enforcement officers to retain rough notes when their contents are incorporated in official records and they destroy their notes in good faith. The purpose of the instant Motion is to place the Government on

notice that any destruction of their rough notes cannot be in good faith as of this time forward. The thrust of Terrell is that such rough notes are producible except when they are destroyed in good faith and it is the position of the Defendant that no destruction can be in good faith after the Defendant's request for the preservation of such agency's rough notes.

WHEREFORE, the Defendant prays for such Order as is just and proper with respect to this Motion.

This the 15 day of February, 1993.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA

Plaintiff

vs.

ROBERT L. VANBUSKIRK

Defendant

MOTION NO. 7

MOTION FOR ACCESS TO ORIGINAL TAPE RECORDINGS

NOW COMES the Defendant, by and through counsel, and moves this Court for access to all original tape recordings of conversations between Defendant and other persons. In support of the Motion, Defendant shows unto the Court as follows:

1. Transcripts of tape recordings have been provided by ___ to the U.S. Attorney.

2. Defendant desires to compare the transcripts to the original tapes to determine the accuracy of the transcripts.

3. Defendant also desires to have an expert evaluate the tapes to determine if they have been altered in any way.

This the 15 day of July, 1993.

(d) Of any wire or oral communications at any place where the Defendant was at the time of this surveillance;

(e) Of any wire or oral communication which the Defendant in this case is named or otherwise referred to;

(f) Of any wires, the contents of which evidence transfers of money;

(g) Of any wire or oral communications intercepted pursuant to warrant or application in which the Defendant's name appears, or which warrant or application was based upon investigatory memoranda, etc., in which Defendant's name appears.

2. Any and all actual voice records, tapes, memoranda, letters and articles of any electronic or other surveillance of any wire or oral communications to which any attorney for the accused, his or her agents, or employees, was a party and any conversation at which said attorney, his or her agents, or employees, were present.

3. The demand for disclosure under Paragraphs 1 and 2 includes any wire or oral communications, logs, records, etc.:

(a) to which the parties to that conversation may have allegedly consented;

(b) which revealed the existence of said conversations but not the contents;

(c) which were undertaken by a private person or corporation in addition to any governmental agency.

4. For any electronic or other surveillance as described in

1 through 3 above for which there are no voice records, tapes, mechanical or electrical recordings, logs, memoranda, records, letters or articles, the names and business addresses of the persons who conducted said surveillance or who have knowledge of said surveillance.

5. For any electronic or other surveillance requested in 1 through 4 above for which this Court might deny the demand for voice records, tapes, mechanical or electrical recordings, logs, memoranda, records, letters or articles of same, the existence and circumstances of same; "circumstances" is meant to include date and place of the surveillance, and duration of the surveillance, the manner in which it was conducted, and all other relevant facts.

6. Demand is also made for any and all applications, affidavits, authorizations, Orders, memoranda and other papers submitted in support of applications for executive, administrative, or judicial approval of such surveillance as described above, and all opinions and decisions responsive thereto or relating to the surveillance described above.

7. The aforementioned demand seeks not only disclosure of evidence presently known to the Government, but also that which in the exercise of due diligence may or should become known during the course of further proceedings.

8. The Defendant further requests an entry of an Order requiring the Government to inquire of all Federal, State and local agencies that conduct electronic surveillance to determine whether there has been any electronic surveillance as described above.

9. The Defendant further requests the entry of an Order requiring the Government's response to this Motion (a) to be unequivocal; (b) to include any surveillance described above (not just that which the Government concedes is unlawful); (c) to include any telephones and premises used by the Defendant; (d) to be under oath; (e) to be made by responsible Government officials in a position to know directly the results of the aforesaid inquiry; (f) to certify that no other Government agencies are involved in the current investigation or have been involved in other investigation relating to the Defendant himself.

10. Without the above-requested inquiry and response entered in the record of the above-styled action, Defendant cannot be protected in his right to be free from unlawful electronic and other surveillance, nor can Defendant determine the parameters of the Motion to Suppress to be filed herein.

11. If such techniques have been used, the Defendant requests that the Government afford the Defendant's attorney(s) with a true, complete and correct copy of any such recordings or interceptions, together with the authority for making such interception or recording, an accurate transcript thereof, and with any log reflecting the date that the recordings or interceptions were made, the names of the governmental agents who participated in the recordings or interceptions and the identity of all speakers on the recordings or interceptions. The Defendant also seeks copies of all documents relative to any court-ordered eavesdropping, intercept or homing Orders which are known to the Government as

being relevant to the charges herein;

12. Defendant further requests that the Government:

(a) Allow the inspection of any and all electronic surveillance equipment used by the United States in this case for the surveillance of this Defendant, the co-Defendants and/or alleged co-conspirators or Defendant's attorneys. Said equipment is to include, but not be limited to, homing devices, beepers, body bugs, shotgun mikes, telephone taps or other listening devices.

(b) State whether or not any radio messages were intercepted from the Defendant by any government agent or agency, and further state what radio frequencies and what types of radio equipment were used by the United States officials. Further, furnish a transcript of all radio messages intercepted, if any.

(c) Furnish copies of any and all radio logs made by officials of the United States Government who were involved in the investigation leading to the arrest of the Defendant.

13. In support of this motion, the Defendant relies on the authority contained in 18 U.S.C. Section 3504, which specifically provides in subsection (a)(1), for making demands for said evidence. That section also requires that the Government in this case to affirm or deny the existence and/or occurrence of the eavesdropping. Further constitutional authorities relied on are the Fourth, Fifth, Sixth and Ninth Amendments to the Constitution;

7. Claimants Joshua Ronald Van Buskirk, Matthew K. Van Buskirk, Kristopher Mark Murphy Van Buskirk, Robert Alden Van Buskirk, James Lee Abel, and Robert L. Van Buskirk, and Tina Van Buskirk, and undersigned counsel, agree now and forever to release and hold the United States harmless from any and all claims, suits at law or other legal actions concerning the defendant property, that is, firearms and ammunition, now being released to Claimants Joshua Ronald Van Buskirk, Matthew K. Van Buskirk, Kristopher Mark Murphy Van Buskirk, Robert Alden Van Buskirk, and James Lee Abel under this Settlement Agreement.

8. All parties, signatories herein, and undersigned counsel agree to bear their own costs, including attorneys' fees

Respectfully submitted this the 10th day of November, 2010

Josh R. VanBuskirk
Joshua Ronald Van Buskirk, CLAIMANT

11-08-10
DATE

Brian Davis

11-08-10
DATE

Matthew K. Van Buskirk
JUVENILE CLAIMANT
by Brian Davis, GUARDIAN AD LITEM

for Kristopher Mark Murphy Van Buskirk 11/5/10
Kristopher Mark Murphy Van Buskirk
JUVENILE CLAIMANT
by Chris Callahan, GUARDIAN AD LITEM

DATE

Robert Alden Van Buskirk, CLAIMANT — DATE 11/04/10

John Byrd attorney for claimant
James Lee Abel, CLAIMANT — DATE 11/10/10

Nelson Alfonso Epley, Jr. — DATE 11/08/10

Tina Van Buskirk — DATE 11-8-10

Sean Devereux, COUNSEL — DATE 11/10/10
To Claimants Joshua Ronald Van Buskirk, Matthew K. Vau Buskirk, Kristopher Mark Murphy Van Buskirk, Robert Alden Van Buskirk, and James Lee Abel, and to Robert L. Van Buskirk

John Byrd, COUNSEL — DATE 11/10/10
To Claimants Joshua Ronald Van Buskirk, Matthew K. Van Buskirk, Kristopher Mark Murphy Van Buskirk, Robert Alden Van Buskirk, and James Lee Abel, and to Robert L. Van Buskirk

ANNE M. TOMPKINS
UNITED STATES ATTORNEY

THOMAS R. ASCIK
ASSISTANT UNITED STATES ATTORNEY

11/10/10
DATE

ATTACHMENT TO AND ACCORDING TO THE TERMS OF

SETTLEMENT AGREEMENT OF ~~OCTOBER~~ November 10, 2010

UNITED STATES V. RUGER 223, ET AL

CIVIL NO 1:09cv197

Firearms claimed by and to be returned to Joshua Ronald Van Buskirk:

1. Ruger, model 223 mini rifle, serial number 18402495,
2. Remington, model 510, 22 caliber rifle, no serial number,
3. Remington model 1100, 12 gauge shotgun, serial number 489500V,
4. Smith & Wesson, model 686-6, 357 revolver, serial number BFL8678,
5. Smith & Wesson, model 66-1, 357 revolver, serial number 58K2950,
6. Smith & Wesson, model 60, 38 revolver, serial number R281894,
7. Beretta, model 92-F pistol, serial number BER065210Z,
8. Iver Johnson, model 32 S, shot revolver, no serial number,
9. Winchester, model 12, 12 gauge shotgun, serial number 381915,
10. Savage, model 67, 12 gauge shotgun, serial number E049816,
11. Ithaca, 20-37 shotgun, serial number 371319647,
12. Remington, model 1100, 12 gauge shotgun, serial number P061746M,
13. Smith & Wesson, 22 caliber revolver, serial number 15768.

Firearms claimed by and to be returned to Matthew K. Van Buskirk:

14. Rossi, model 62, 22 caliber rifle, serial number G423145,
15. Remington model 597, 22 caliber, serial number 2682801,
16. Rossi, model 62 rifle, serial number G342855.

Firearms claimed by and to be returned to Kristopher Mark Murphy Van Buskirk:

17. Browning, model 22, 22 caliber rifle, serial number 70T37904,
18. Remington, model 550-1, 22 caliber rifle, serial number X27.

Firearms claimed by and to be returned to Robert Alden Van Buskirk:

19. Winchester, model 57, 22 caliber rifle, serial number 29822,
20. Smith & Wesson, model 19-3, 357 revolver, serial number 2K42357,
21. Colt, model Mark IV, 45 pistol, serial number SI10184,
22. Ruger, model Mark II, 22 caliber pistol, serial number 21235826,
23. High Standard, model Victor, 22 caliber pistol, serial number 2481060,
24. Coly, model Challenger, 22 caliber pistol, serial number 28853C,

25. Smith & Wesson, model 1006, pistol, serial number TET0461,
26. Smith & Wesson model 15-4, 38 revolver, serial number 20K6793,
27. Browning, model BT99, 12 gauge shotgun, serial number 01667RN199,
28. Remington, model 1100, 12 gauge shotgun, serial number 529321V,
29. Steyr, 30-06 rifle, serial number 9945.

Firearms claimed by and to be returned to James Lee Abel:

30 FEG, model 85M, 7.62 rifle, serial number SL01177,
31. Marlin, model 782, 22 caliber rifle, serial number 15679437,
32. Rexio, model 45/410, 45 caliber pistol;
33. Cobb, model BA 50T, 50 caliber rifle, serial number 1101,
34. Keltec, 9mm pistol, serial number E4404.

Ammunition claimed by and to be returned to James Lee Abel:

35. 1,558 rounds of ammunition (assorted).

Ammunition claimed by and to be returned to Joshua Ronald Van Buskirk:

36. 141 rounds of ammunition (assorted),
37 431 rounds of ammunition (assorted),
38. 647 rounds of ammunition (assorted),
39. 607 round of ammunition (assorted),
40. 263 rounds of ammunition (assorted),
41. 87 rounds of ammunition (assorted).

Ammunition claimed by and to be returned to Robert Alden Van Buskirk:

42. 150 rounds of ammunition (assorted),
43. 94 rounds of ammunition (assorted),
44. 178 rounds of ammunition (assorted),
45. 332 rounds of ammunition (assorted),
46. 302 rounds of ammunition (assorted),
47. 134 rounds of ammunition (assorted),
48. 125 rounds of ammunition (assorted),

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA Plaintiff vs. ROBERT L. VANBUSKIRK Defendant	)	MOTION NO. 6

MOTION PURSUANT TO 18 U.S.C. SECTION 3504 FOR DISCLOSURE OF ELECTRONIC OR OTHER SURVEILLANCE AND FOR ESTABLISHING EVIDENCE UNDER 18 U.S.C. SECTION 2518 (8)(d), (9) AND (10), AND MEMORANDUM OF LAW IN SUPPORT THEREOF

NOW COMES the Defendant, by and through counsel, and moves this Honorable Court to enter an Order compelling the Government to disclose the following:

1. **Any and all voice records, tapes, mechanical or electronic recordings, logs, records or memoranda of any electronic or other surveillance:**

(a) **Of any wire or oral communications to which the above-named Defendant was a party;**

(b) **Of any wire or oral communications at any place in which the above-named Defendant has any property right or any other nexus of use and reasonable expectation of privacy;**

(c) **Of any wire or oral communications at any place put under surveillance for the purpose, in whole or in part, of gathering evidence or leads against the Defendant in this case;**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA	)	
	)	
Plaintiff	)	
	)	
vs.	)	MOTION NO. 5
	)	
ROBERT L. VANBUSKIRK	)	
	)	
Defendant	)	
	)	

REQUEST FOR NOTICE OF GOVERNMENT'S INTENTION TO USE EVIDENCE

NOW COMES the Defendant, by and through counsel, and respectfully moves this Court for entry of an Order pursuant to Rule 12(d) of the Federal Rules of Criminal Procedure and the principles of Brady v. Maryland, 373 U.S. 83 (1983), directing the Government to serve specific written notice of:

1. Any and all evidence or information in its possession or custody or the existence of which is known, or by the exercise of due diligence could become known to the Government, and which evidence or information arguably is subject to a motion to suppress evidence or information which the Government presently or at any time intends, contemplates or considers using at the trial in its case-in-chief, on rebuttal or otherwise.

2. Any and all grounds upon and reasons for which said evidence may be subject to suppression. Specifically, but not exclusively, and without interfering with other defense motions in this respect, the Defendant requests that the Government disclose the circumstances surrounding the authorization, if any, with respect to the recording and monitoring of oral conversations by

and between any witness, victim, confidential informants and/or government agents and the Defendant, as well as any oral or verbal statements, and/or tangible items seized or taken from the Defendant.

MEMORANDUM OF LAW

Under Rule 12(b)(3) of the Federal Rules of Criminal Procedure, the Defendant must raise prior to trial Motions to Suppress Evidence. In order to expedite the preparation for trial and to avoid unnecessary interruptions during the trial to hear suppression issues, the Defendant calls upon the Government to advise the Defendant of any specific evidence which is arguably subject to a Motion to Suppress or Motion in Limine.

Defendant's motion requests notice of evidence "arguably" subject to suppression or exclusion at trial. This is as it should be. If an argument properly can be made, counsel is entitled to the opportunity to make it. Certainly the attorneys for the Government should not sit as judges and decide which issues will be exposed to the adversary process and which will be hidden from it. Indeed, the Government conceded as much in Alderman v. United States, 394 U.S. 165 (1969), where it agreed that surveillance records "arguably relevant" to the petitioner's conviction should be turned over to the trial judge for in camera examination, 394 U.S. at 181,184 and n.15; c.f. United States v. Agurs, 427 U.S. 106, 114 (1967).

Defendant acknowledges that the Motion in this case is somewhat more broad than the literal terms of Rule 12(d)(2) and requests notice of evidence the Government intends to use "in its

case-in-chief, rebuttal, otherwise." Defendant submits that the Court has the inherent authority to so order. See, United States v. Richter, 488 F.2d 170, 173-174 (9th Cir. 1973). Further, the Defendant contends that "danger of unfair prejudice,...undue delay (and) waste of time..." require pre-trial disclosure and resolution of all potential suppression and exclusion issues. See, FRE 403, Battle v. United States, 345 F.2d 438, 400 (D.C. Cir. 1965) (per curiam).

There is no reason to permit a "trial by ambush." United States v. Herberman, 583 F.2d 222 (5th Cir. 1978); United States v. Kelly, 420 F.2d 26 (2d Cir. 1969). The Motion is manifestly in the interest of judicial economy, is necessary to safeguard the Defendant's constitutional rights, and therefore should be granted.

WHEREFORE, the Defendant prays for such Order as is just and proper.

This the 16 day of February, 1993.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA)
)
Plaintiff)
)
vs.) MOTION NO. 4
)
ROBERT L. VANBUSKIRK)
)
Defendant)
)

MOTION FOR DISCLOSURE OF RULE 404(b) EVIDENCE AND INCORPORATED MEMORANDUM OF LAW

NOW COMES the Defendant, by and through counsel, and moves this Honorable Court to order the Government to disclose whether or not it intends to utilize witnesses or evidence to establish other allegedly "bad acts" or a "similar course of conduct" (Federal Rules of Evidence 404(b)) not charged in the Indictment, and if the Government intends to do so, then to require the Government to disclose the names and addresses of the witnesses and the tangible evidence on which it intends to rely in an attempt to establish same.

1. Defendant submits pre-trial disclosure is necessary so that Defendant may properly prepare to meet the Government's proof, confront his accusers and to be ready to proceed, during Defendant's case-in-chief, with affirmative evidence which will clearly contradict and refuse the Government's proof as to Rule 404(b) evidence.

2. The elements of knowledge and intent, so critical to this case, can only be established, if at all, by circumstantial

evidence. In this regard, the Government may seek to introduce evidence of other acts and/or wrongs aside from those alleged in the Indictment to show Defendant's purported intent and knowledge. See Rule 404(b), FRE.

3. Rule 404(b) provides, in pertinent part, as follows:

> Other crimes, wrongs or acts. Evidence of other crimes, wrongs or acts is not admissible to prove the character of the person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent preparation, plan, knowledge, identity or absence of mistake or accident.

Of course, Defendant does not now challenge the introduction of any such similar crime or act evidence, but merely requests that the Government be required to disclose the nature of the evidence and the witnesses and documentary evidence, if any, upon which the Government intends to rely in establishing the evidentiary foundation prerequisite to admission of any such evidence at trial.

4. Defendant recognizes that FRE 404(b) does not incorporate a requirement that advance notice be given when other crimes or wrongs will be shown at trial. Nevertheless, this Court has the power to require such pre-trial disclosure. See 2 Weinstein's Evidence, Section 404(01) at 404-13 to 404-14 (1980). Judge Weinstein suggests that pre-trial disclosure permits the setting of limitations to prevent abuse and allow the Defendant to prepare adequately to meet the issues. Further, Judge Weinstein concludes that springing these matters as a surprise at trial may well bring the balancing test of FRE 404 into play.

5. In United States v. Baum, 484 F.2d 1325 (2nd Cir. 1973),

the Second Circuit Court of Appeals reversed a conviction for possession of stolen goods where a pre-trial motion to reveal the identity of a Government witness was denied and the witness testified at trial that Defendant previously had received stolen goods unrelated to possession of the particular goods as set forth in the Indictment. In so doing the Court stated:

> Confronted for the first time with the accusation of prior criminal conduct and the identity of the accused, the defendant had little or no opportunity to meet the impact of this attack in the midst of trial. This precarious predicament was precipitated by the prosecutor. The failure to reveal Greenhalgh's identity until he was presented as a witness confronted the trial judge with the hard choice of interruption of the trial or denial to the defendant of a reasonable opportunity of meeting the severe impact of this aspect of the prosecutor's evidence.

482 F.2d at 1331-32. Accordingly, the Court ordered a new trial so that Defendant could be provided a "fair opportunity to meet the critical and damaging proof of an offense not presented against him in the Indictment." [1]

Similarly, in Riggs v. United States, 280 F.2d 750, 753 (5th Cir. 1960), the Court of Appeals strongly condemned nondisclosure of a transaction not included in the indictment but "saved to be used as a surprise knock-out blow."

6. Given the seriousness and complexity of the charges in the instant indictment, Defendant contends that he would be denied his Fifth Amendment right to due process of law and his Sixth

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[1] Compare United States v. Braasch, 505 F.2d 139 (7th Cir.) cert. denied, 421 U.S. 910 (1974), where the Court cited Baum but held there to be no error since Defendant had notice or opportunity to meet the Government's proof of uncharged criminal conduct.

Amendment right to effective assistance of counsel if the Government is permitted to conceal, until trial, the particular other crimes or acts it intends to offer in evidence and the identities of those persons upon whom it will rely to show such other similar acts or wrongs. Without pretrial disclosure of the requested information, Defendant cannot adequately prepare to meet such "similar act" evidence and these rights would be hopelessly frustrated. See also United States v. Stofsky, 400 F.Supp. 609 (S.D.N.Y. 1973); aff'd, 527 F.2d 237 (2nd Cir. 1975), cert. denied, 429 U.S. 819 (1976).

7. Moreover, to prevent undue prejudice at trial, Defendant anticipates filing a Motion in Limine to seek exclusion of all such similar acts or other crime evidence. It would be premature for Defendant to file such a Motion at this time; however pretrial disclosure by the Government of the information sought to be obtained in this Motion will facilitate an orderly trial and allow defendant the opportunity to timely seek exclusion of prejudicial and non-relevant evidence.

8. Finally, erroneous admission of other crimes evidence remains a common source of mistrials, appeals and retrials. Thus, it is very much in the interest of sound judicial administration to require pretrial notice of the intention to use other crimes evidence and to resolve admissibility to the greatest extent possible, before the jury is exposed to voir dire examination, and to opening statements. See generally, 2 Weinstein's Evidence, 404 (1) at 404-13 to 404-14, (1980).

WHEREFORE, Defendant respectfully requests this Court to direct the Government to immediately disclose to Defendant any evidence of alleged similar crimes, acts or wrongs it intends to offer at trial and the identities of those persons and the documentary evidence, if any, through which the Government will seek to produce such evidence. Similarly, production of investigated and unsubstantiated "404(b)" allegations should likewise be produced under the dictates of Brady v. Maryland, 373 U.S. 83 (1963).

This the 13 day of Feb, 19 92.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA)
)
Plaintiff)
)
vs.) MOTION NO. 2
)
)
ROBERT L. VANBUSKIRK)
Defendant)
)

MOTION FOR BRADY AND OTHER FAVORABLE MATERIALS, AND INCORPORATED MEMORANDUM OF LAW

NOW COMES the Defendant, by and through counsel, and files his Motion for Brady and other favorable materials, and an Incorporated Memorandum of Law. As grounds therefore, the Defendant shows as follows:

1. Under the United States Supreme Court decision in Brady v. Maryland, 373 U.S. 83(1963), the U.S. Attorney has an obligation to produce all Brady material for the Defendant well in advance of the scheduled trial date. No doubt, Defendant's view of Brady is substantially broader than that of the Government's attorney.

2 The Government may have utilized at least one "co-operating" or immunized witness in this case. The Defendant is entitled, as a matter of due process of law, to know specifically what the Government has "done" for the "co-operating" or immunized witness or witnesses, as that will bear directly on the confidential informer's interest in the outcome of the case and his motive for co-operating with the Government, which is an issue

properly presented to the jury. See, Devitt & Blackmar, Federal Jury Practice and Instructions, Section 17.01 at 15-17.

3. Defendant claims under Brady, and its progeny, as well as the language and spirit of Giglio v. United States, 405 U.S. 150 (1972); United States v. Tashman, 478 F.2d 129 (5th Cir. 1973), and Napue v. Illinois, 360 U.S. 264 (1959),that he is entitled to any and all records, memoranda, and documents, as to all persons who will testify for the Government during its case-in-chief or its rebuttal case, or whose testimony has been used before the grand jury to obtain the present indictment, or whose sworn testimony or statements may be used in this trial, or who have been contacted with regard to the investigation of this case, the following specific and detailed information from the United States Attorney and Local, State and Federal Law Enforcement Agencies:

a. The existence and substance of any and all promises, rewards and inducements, whether written or oral as follows:

   i. not to prosecute the person for any crime or crimes;

   ii. not to prosecute a third party or family member for any crime or crimes;

   iii. to dismiss any counts of an indictment pending against a Government witness or informant or any member of his family;

   iv. to provide a formal grant of statutory immunity, or to provide an informal assurance that the person will not be prosecuted in connection with any

testimony given by him or her;

v. to recommend leniency in sentencing for any crime or crimes for which the person is convicted;

vi. to recommend a particular sentence for any crime or crimes for which the person is convicted;

vii. to provide favorable treatment or consideration, that is, money or the like, to the person or to friends or relatives of the person in return for the person's cooperation and testimony;

viii. to compromise or diminish, or to recommend the compromise or diminution of any federal, state or local taxes which the person or friends or relatives of the person owe or claim to owe; and

ix. to make any other recommendation of any benefit, however slight, or to give any other consideration to the person or friends or relatives of the person.

b. All threats, express or implied, and coercive tactics of any type directed at any person interviewed by the Government in connection with this case or at any witness or potential witness for the Government in this case.

c. Amounts of money paid out to any informant, special employee, alleged co-conspirator (whether indicted or unindicted), alleged accomplice (whether indicted or unindicted), alleged aider and abettor (whether indicted or unindicted), tipster or snoop who was interviewed in connection with this case or who may be called as a

witness by the Government during any phase of the trial of this case, together with the dates of payment, where made, to whom made and the reasons for the payment of such sums. This request specifically embraces any payment made under any so-called witness protection program. The Defendant further requests the disclosure of all receipts, vouchers or other books and records concerning money expended for, to or on behalf of the above class of persons.

d. A copy of all Federal Bureau of Investigation or any other investigative agency's departmental rules or regulations pursuant to which any informant, special employees, alleged co-conspirator (whether indicted or unindicted), alleged accomplice (whether indicted or unindicted), alleged aider and abettor (whether indicted or unindicted) or snoop was hired, employed, or requested to participate in the investigation of this case.

e. Whether the Government has paid money or the like for any piece of tangible or physical evidence that may be used in connection with this case, and, if so, state the name, address and telephone number of the person to whom payment was made; the amount thereof; the date thereof; and the tangible or physical evidence obtained.

f. Whether any witness called before the Grand Jury or who has or will testify to any United States Attorney, investigator or at trial has ever been psychiatrically

hospitalized or undergone psychiatric examination, treatment, mental status examination or care and, if so, a list of names and addresses of the psychiatrists, hospitals and copies of any and all relevant records and reports.

g. Whether any witness called before the Grand Jury or any witness which the Government will utilize at trial has ever been treated for drug abuse, Government of Virgin Islands v. Hendricks, 476 F.2d 776 (3rd Cir. 1976), psychiatrically hospitalized, or undergone psychiatric care, see Chavis v. State of North Carolina, 637 F.2d (4th Cir. 1980), and, if so, whether the Grand Jury was made aware of same;

h. Any statements of any type whatsoever made by any individuals who were contacted in connection with or involved in the investigation of this case which may be inconsistent, in whole or in part, with any other statement made by the same individual; and any statements made by such individuals that are inconsistent, in whole or in part, with any statement made by other individuals who have given statements relevant to the charge(s) against the Defendant or with any knowledge held by such individuals.

i. Any and all "rap" sheets or histories of arrests or convictions of any unindicted co-conspirator or Government witness.

3. In addition, the Defendant requests copies of any and all memoranda, reports and correspondence to and from the various Law Enforcement Agencies of the United States and all State, County, Municipal and Local Law Enforcement Agencies regarding the investigation herein and more particularly documenting the conflict and antagonism between the various State and Federal agencies.

4. The Defendant also contends that he is entitled to any statement or admissions by a witness for or on behalf of the Government with respect to the witness' memory or loss thereof.

5. Defendant further contends that he is entitled to statements by and from all witnesses who admitted to engaging in the same conduct as Defendant, but who denied knowledge that their conduct violated the law or who claimed that he had not intended to violate the law or who had been "forgiven" by the Federal and State authorities.

6. Counsel for the Defendant is frequently troubled by the fact that Brady material is "defensive" in nature. Yet, absent a "spy" in the defense camp, the Government does not know what Defendant's theory of defense is, or may be. Yet, Defendant is at the mercy of the United States Attorney prosecuting the case who never may have been a defense attorney and, hence, may have a substantially different view of Brady and the Defendant's theory of defense than does an experienced criminal defense lawyer.

7. The Defendant contends that this Court should specifically direct the Government to take off its "blinders" and in the spirit of fairness and equity seek and produce for the

Defendant the documents, letters, records and other items sought, irrespective of the United States Attorney's determination of whether a witness' statement or a particular letter or exhibit can "help" the Defendant. The Defendant and his attorney, not the United States Attorney, ought to be the judge of his defense and the documents relevant thereto and necessary in support of same.

8. To the extent that specificity is required to demonstrate the materiality of the requested information, (see, United States v. Agurs, 427 U.S. 97 (1976)), the Defendant submits that this requirement is satisfied in this Motion.

9. Defendant further contends that the Government should disclose to counsel for the defense any and all evidence in the actual or constructive possession of the Government which is of a favorable character for the Defendant in this case and material to the issue of guilt or innocence or to punishment in this case, pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution, including, but not limited to, the following materials:

a. Any oral, written or recorded statements made by any person to the police, to the United States Attorney or to the Grand Jury which tend to establish the Defendant's innocence, to mitigate punishment, or to impeach the credibility or contradict the testimony of any witness whom the Government will call at the trial of the cause. Brady v. Maryland, 373 U.S. 83 (1963).

b. Any investigative report made to the police which tends to establish the Defendant's innocence, to mitigate punishment or to impeach the credibility or contradict the testimony of any witness whom the Government will call at the trial of this case. Giles v. Maryland, 386 U.S. 66 (1967).

c. The names and addresses of witnesses who might establish the Defendant's innocence, to mitigate punishment or to impeach the credibility or contradict the testimony of any witness whom the government will call at the trial of this case.

d. Any information or material which tends to establish the Defendant's innocence, to mitigate punishment or to impeach the credibility or contradict the testimony of any witness whom the Government will call at the trial of the cause. Naupue v. Illinois, supra; Giglio v. U.S., Supra.

e. Any scientific or medical report which tends to establish the Defendant's innocence, to mitigate punishment or to impeach, discredit or contradict the testimony of any witness whom the Government will call at the trial of the cause. Ashley v. Texas, 316 F.2d 80 (5th Cir.) cert. denied, 375 U.S. 931 (1963).

f. Any inconsistent statements made by the witnesses for the Government about the alleged crime.

g. Any evidence which would tend to show that any searches, surveillance, arrest or other police procedure utilized in this case were illegal or improper.

WHEREFORE, the Defendant prays for such Order as is just and proper.

RESPECTFULLY submitted, this 15 day of Feb, 19 79.

WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
4: 93CR01

UNITED STATES OF AMERICA)
)
Plaintiff)
)
vs.) MOTION NO. 1
)
)
ROBERT L. VANBUSKIRK)
Defendant)
)

MOTION FOR DISCOVERY AND INSPECTION AND TO REQUIRE THE GOVERNMENT TO DISCLOSE ALL EXCULPATORY EVIDENCE

NOW COMES the Defendant, by and through counsel, and moves this Court pursuant to Federal Rules Criminal Procedure 16 and the principles of Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, for an order directing the United States of America to make inquiry and to produce and permit Defendant to inspect, copy or photograph each of the following, now known to or in the possession of the government, or any of its agents or which through diligence would become known from the investigating officers, witnesses or persons having knowledge:

1. Any and all tangible objects obtained during the investigation in this case, including:

(a) tangible objects obtained from the Defendant's person or effects;

(b) tangible objects obtained from the person or effects of co-defendant(s);

(c) tangible objects obtained from the person, effects or vehicle driven by a co-defendant;

(d) clothing worn by Defendant on the day of the alleged offense;

(e) clothing worn by the complaining witness on the day of the alleged offense;

(f) tangible objects obtained from the person or effects of the complaining witness.

2. Any and all other books, papers, documents, photographs, videotapes, motion pictures, mechanical or electronic recordings, buildings and places, crime scenes, or tangible objects, or copies of portions thereof, upon which the government relied in returning the Indictment against Defendant(s), or which the government plans to offer in evidence in this case.

3. Any and all property in the possession of the government or its agents or seized by them, belonging to or alleged by the government to belong to Defendant(s).

4. Any and all fingerprint impressions, fingernail scrapings, blood samples, rape kit, clothing, hair, fiber or other materials obtained by whatever means or process from the scene of the offense, the Defendant(s) or co-defendants, or the vehicle occupied by any one of the Defendant(s) or co-defendants, whether such fingerprint impressions, blood samples, clothing, hair, fiber, or other materials were those of Defendant(s), or those of some other person known or unknown.

5. Any and all comparisons of blood, fingerprints, clothing hair, fiber or other materials made in connection with this case.

6. Any and all expert opinions, results, reports, tests and examinations, scientific or otherwise, made in connection with this case whether or not those tests, experiments or examinations are

positive or negative, and whether or not they are completed. The Defendant also requests that the Defendant or the Defendant's attorney or representative be permitted to personally examine, inspect and photograph all pieces of physical evidence that were obtained during the Government's investigation of this case and that have been scientifically examined on behalf of the Government. The Defendant further specifically reserves the right to move this Court to have a competent expert of the Defendant's own choosing perform scientific testings on any of the physical evidence scientifically examined by the Government if the Defendant deems it desirable or necessary, under appropriate and reasonable safeguards imposed by the court.

7. The written report of any chemical analysis of the alleged plant material seized herein, prepared by the government or any of its agents or anyone at its direction, together with any descriptions, test results, test dates, and any determination as to the nature or weight of said substances.

8. Any and all results or reports of physical or mental examinations.

9. Any and all documents, instruments, forms or statements of any kind signed or purported to have been signed by the Defendant(s).

10. A complete and exact copy of the Defendant's criminal record, both as an adult and juvenile.

11. Any and all FBI and local arrest and conviction records of all persons the government plans to call at trial.

12. Any and all records, criminal or otherwise, or information that can arguably be helpful or useful to the defense in impeaching or otherwise detracting from the probative force of any potential Government witness or of the Government's evidence, or that can arguably lead to any records of information that might be used for such impeachment purpose.

13. Any and all personnel files for any witness who may potentially be called by the Government in this case and the existence and identity of all Government files for the witness.

14. Any and all search warrants and underlying affidavits that concern or were directed at any individual who has acted in any capacity as an informant, special employee, alleged co-conspirator (whether indicted or unindicted), alleged accomplice (whether indicted or unindicted), alleged aider and abettor (whether indicted or unindicted), tipster, snoop or investigator in this case, or who may be called as a witness by the Government during any phase of the trial of this case. This request applies to all search warrants -- whether executed or unexecuted -- that have existed at any time.

15. Copies of any and all records, memoranda, reports and/or documents relating to the monitoring or opening of Defendant's mail, or the mail of any co-defendant, or alleged co-conspirator, regardless of whether said alleged co-conspirator has been indicted.

16. Any and all toll records of any type whatsoever that allegedly reflect conversations that the Defendant had with any

person whatsoever, including, but not being limited to, all persons who have acted in any capacity as an informant, special employee, alleged co-conspirator (whether indicted or unindicted), alleged accomplice (whether indicted or unindicted), alleged aider and abettor (whether indicted or unindicted), tipster, snoop or investigator in this case or who may be called by the Government as a witness during any phase of the trial of this case.

17. Copies of any and all diagrams and charts the Government intends to use as evidence in the trial herein, both in its case-in-chief and in its rebuttal.

18. All statements, memoranda and/or documents producible under 18 U.S.C.A. §3500 (1983).

19. The date, time, method and circumstances, as well as place of, any seizure of evidence from a particular person or location which the government intends to offer as evidence in the trial of the above-captioned matter.

20. Any and all names and addresses of persons who have knowledge pertaining to this cause or who have been interviewed by the government in connection with the case.

21. The date, place, circumstances and names of all individuals involved in any identification procedures (photographic, corporeal or any other type), interrogations, searches or seizures of any type that were conducted in connection with the investigation of this case.

22. Any evidence that the Government has within its possession, custody or control, or the existence of which is known,

or could become known through the exercise of due diligence by the Government, concerning any identification procedure, interrogation, search or seizure conducted by the Government, its agents or employees that tends, however slightly, to taint or make illegal the identification procedure.

23. Reveal and disclose whether any person who has been interviewed in connection with this case has undergone hypnosis, age regression or similar procedure, and, if so, list the name of such person; the date that he or she underwent the procedure; the name and address of the hypnotist or psychologist administering the procedure; and the results thereof.

24. All relevant information concerning whether any person has been videotaped in connection with the investigation of this case.

25. Disclose whether any person involved in the investigation of this case has been given a polygraph examination, and if so, list the name of the person(s) examined; the name and address of the operator(s); the date(s) of the examination; and furnish the Defendant with a copy of the questions posed, the answers given and the interpretation thereof.

26. Disclose and identify each occasion on which each potential witness for the Government has testified before any court, grand jury or other tribunal or body with regard to the Defendant or the investigation of this case.

27. Disclose and identify each occasion in which a witness or potential witness for the Government, especially a witness who

is an accomplice, co-conspirator or expert, has testified before any court, grand jury, other tribunal, stenographer or court reporter.

28. Any evidence or information tending, however slightly, to link the commission of the crime(s) in question in this case to someone other than the Defendant.

29. The name, identity and whereabouts of any informer who gave information leading to the arrest of the Defendant(s) or co-defendants, and whether said informer was paid by the Government for such information.

30. The dates and times of every interview conducted by the Government or any of its agents with any cooperating individuals and/or confidential informers involved in this case, and any other witness or person having, or purporting to have, knowledge of the facts herein.

31. The names and classifications of any and all Federal Bureau of Investigation Agents, United States Attorneys or other Government employees who met with, talked to or who were present at any meeting, telephone conversation or discussion held with any informants, special employees or snoops used by the Government during the investigation of this case.

32. Reveal and disclose all transcriptions of any kind, whether recorded or written, regarding any conversations with, discussions with or statements made by informants, special employees, alleged co-conspirators, (whether indicted or unindicted), alleged accomplices, (whether indicted or unindicted),

alleged aider and abettors (whether indicted or unindicted), tipsters or snoops of the Government who have been involved in any manner whatsoever in the investigation of this case or who may be called as a witness during any phase of the trial of this case.

33. List the date, place and the names and addresses of all persons present when any informer, special employee, alleged accomplice (whether indicted or unindicted), alleged co-conspirator (whether indicted or unindicted), alleged aider and abettor (whether indicted or unindicted), tipster, snoop or individual acting in an undercover capacity who has been involved in any capacity in the investigation or preparation of this case or who may be called as a witness by the Government during any phase of the trial of this case gave sworn testimony (whether during a trial or during pre-trial proceedings) or gave a sworn statement of any type. These sworn statements include, but are not limited to, affidavits, tax returns, firearms records and/or loan applications.

34. State whether any Government agent or anyone acting at the direction or behest of the Government (be he designated as an informant, special employee, snoop, prison inmate or otherwise) has communicated with the Defendant in order to attempt to obtain any information or facts from the Defendant pertaining to this case or his defense thereof, and if so, give the name, address and telephone number of such agent, informant, special employee, snoop or prison inmate, together with all of the facts and circumstances pertaining thereto.

35. Reveal and disclose whether the Government has made any attempt or has in fact gained any information from the Defendant since the return of the above-styled indictment by sending, counseling or advising persons (whatever their classification may be) to talk with the Defendant or his counsel, and, if so, describe all of such activity in detail and the authorization, if any, for such a procedure.

36. Produce a copy of all original notes, statements and memoranda (whether handwritten, recorded or otherwise) that were made by any and all agents of the Government investigating this case, including any person who was acting as an informer, special employee, tipster, snoop or in an undercover capacity.

37. State and reveal whether any notes, documents or recordings relating to the investigation of this case that were made by any agents of the Government, including any person who was acting as an informant, special employee, alleged accomplice, (whether indicted or unindicted), alleged co-conspirator (whether indicted or unindicted), alleged aider and abettor (whether indicted or unindicted), tipster, snoop or in any undercover capacity, have been totally or partially destroyed or altered, and, if so, reveal the following with reference thereto:

(a) The substance of the note, document or recording that was destroyed;

(b) The substance of the alteration;

(c) The name, address, and telephone number of all persons involved in the destruction or alteration;

(d) The reason for the destruction or alteration.

(e) Whether the note, document or recording was destroyed or altered pursuant to an existing policy, federal regulation or for some other reason;

(f) When the destruction or alteration occurred; and

(g) Whether it is the policy and custom of such agent(s) to destroy or alter such notes and memoranda, and, if so, who initiated such policy.

38. Any document or statement which arguably might be admissible under Federal Rules of Evidence 801(d)(1)(B) to rebut an express or implied charge against any Government witness of recent fabrication or improper influence or motive. These documents or statements are required to be produced because they are evidence that the Government may attempt to introduce during the trial of this case and because they are material to the preparation of the defense as to the method of defense and as to the Defendant's approach to the issue of credibility. This request includes any document that might reasonably be foreseen for use during the Government's case-in-chief or its rebuttal case.

39. Reveal and disclose any and all evidence of any type of which the Government is aware, or of which the Government could become aware by the exercise of reasonable diligence, which indicates that any of the individuals whom it has interviewed, debriefed or contacted in connection with the investigation of this case or who may be called as a witness by the Government during any phase of the trial of this case has been involved, however remotely, in any criminal conduct, at any time up the present date, whether or not this conduct resulted in criminal charges being brought against the individual. This request applies, but is not

limited to, any and all informers, special employees, alleged accomplices (whether indicted or unindicted), alleged co-conspirators (whether indicted or unindicted), alleged aiders and abettors (whether indicted or unindicted), tipsters, snoops or individuals acting in any undercover capacity who may testify in this case or who possess information that is relevant or related to this case, as well as to all other individuals of any type who were involved in any manner, regardless of how remote it may be, in the investigation of this case.

40. Reveal and disclose any evidence or information obtained in connection with the investigation of this case that establishes the Defendant's good character or his lack of reputation for committing the act(s) that constitute the crime(s) in question in this case.

41. Reveal and disclose any and all inculpatory evidence of any type that concerns or relates to any individual who has acted in any capacity as an informant, special employee, alleged co-conspirator (whether indicted or unindicted), alleged accomplice (whether indicted or unindicted), alleged aider and abettor (whether indicted or unindicted), tipster, snoop or investigator in this case or who may be called as a witness by the Government during the trial of this case. This request specifically includes, but is not limited to, any charges which were the subject of any plea bargains, or any prosecutorial proceedings of any nature involving the aforementioned class of persons.

42. In addition to all of the items specifically mentioned and listed herein, the Defendant requests that the Government furnish to the Defendant's attorney(s) any and all evidence of whatever type and kind that is within its possession, custody or control, or the existence of which is known or through exercise of due diligence could become known to it, that may be materially favorable to the Defendant, either directly, indirectly or in an impeaching manner, within the purview of Brady, Giglio and their progeny.

WHEREFORE, Defendant moves this Court to order production of the above described items, and for such other and further relief as this Court deems just and proper.

This the 15 day of Feb, 1993.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CASE NO.: 4: 93-CR-01

UNITED STATES OF AMERICA,	)	
	)	
vs.	)	**MOTION FOR DISCOVERY**
	)	
ROBERT L. VANBUSKIRK,	)	
	)	
Defendant.	)	

COMES NOW, the defendant, pursuant to this Court's Arraignment Order and files, this his discovery motions as attached hereto.

This ~~the~~ ____ day of February, 1993

Tom Bush, Esquire
BUSH, THURMAN & WILSON, P.A.
N.C. Bar No. 14061
1201 East Boulevard
Charlotte, North Carolina 28203
Telephone: (704) 377-4164]

lb:vanbuski\disc.mot

FOR THE WESTERN DISTRICT OF NORTH CAROLINA
_____ DIVISION

Case No. 4:93CR01

UNITED STATES OF AMERICA,)
)
VS.) ARRAIGNMENT ORDER
)
ROBERT L. VAN BUSKIRK)
)

I. Arraignment

A. **You have entered in open court a plea of: [X] Not Guilty, and requested a jury trial; [ ] Not Guilty, and waived your right to a jury trial; or [ ] Guilty.**

B. **If you desire to change your plea, you or your attorney must notify the Clerk of this Court in Asheville at (704) 259-0648 and the United States Attorney at (704) 259-0661. If you change your plea from not guilty to guilty on the day of trial, and a jury has been summoned, you may be charged with jury costs. All plea agreements in the Asheville and Bryson City Divisions must be signed and filed no later than 5:00 p.m. the day prior to calendar call.**

II. Trial

A. Your case will be tried in Asheville and calendared for the MARCH, 1993 term of court. You will be notified of the specific date and time to appear.

B. All pretrial motions must be in writing and filed within fifteen *15 days* from this date. Motions not timely filed will be summarily denied and failure of counsel to exercise diligence in timely filing motions is sanctionable. See United States v. Baumwald, 1989 U.S. Dist. Lexis 5963 (D. Me. 1989). See also Rule 16, Federal Rules of Criminal Procedure.

C. All discovery motions should be filed in a single pleading captioned "*Motion for Discovery.*" The United States Attorney has an open-file policy in this district and has indicated that his office will cooperate with defense counsel regarding discovery.

D. Motions for issuance of subpoenas at government expense under Rule 17(b), Federal Rules of Criminal Procedure, must be filed no later than twelve (12) business days before the term at which the case is scheduled to be tried.

E. Requests for special jury instructions shall be filed with the Clerk of this court by the government and defendant no later than one week prior to trial.

F. In the event of a mistrial, further pretrial motions must be filed within 15 days of the declaration of mistrial.

This 9th **day of** July **1993.**

J. TOLIVER DAVIS
UNITED STATES MAGISTRATE JUDGE

Defendant's Attorney

Defendant

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA)
)
Vs.) ELECTION OR WAIVER
) OF COUNSEL
)
ROBERT L. VAN BUSKIRK) Case No. 4:93CR01

[X] ***I. Acknowledgement of Advice***

I, the above named defendant, have been furnished with a copy of the complaint, indictment, or information, advised of the nature of the charges against me, advised of my right to be represented by an attorney in all proceedings before the United States Magistrate Judge and the United States District Judge, and advised that if I am financially unable to hire an attorney of my own choosing, the court will appoint a lawyer to represent me in this case, all of which I fully understand.

[X] ***II. Request for Assistance of an Attorney***

I want a lawyer to represent me at any future proceedings before the Unites States Magistrate Judge and the United States District Judge. I am financially _____(able) to hire an attorney to represent me; therefore, I DO NOT want the court to appoint an attorney.

[ ] ***III. Waiver of Right to an Attorney before the Magistrate Judge***

Having been informed by the court of my constitutional right to be represented by an attorney, I freely, voluntarily, and with an understanding of my right to represented by an attorney in _____ proceedings before the magistrate, I hereby waive my right to representation by an attorney and elect to proceed without such assistance before the United States Magistrate Judge.

[ ] ***IV. Waiver of Right to an Attorney before the District Judge***

Having been informed by the court of my constitutional right to be represented by an attorney, I freely, voluntarily, and with an understanding of my right to represented by an attorney in future proceedings before the district court, I hereby waive my right to representation by an attorney and elect to proceed without such assistance before the United States District Judge.

My signature below indicates that I have read the above checked paragraphs and request the relief therein specified.

R. Lee Van Buskirk
Signature of Defendant

_____
Witness, Deputy Clerk

ORDER

IT IS, THEREFORE, ORDERED that upon review of the foregoing application and financial affidavit, the court finds that defendant is financially _____able to obtain counsel and is _____ eligible for court appointed counsel.

This 9 **day of** Feb. **, 1993.**

J. Toliver Davis
J. TOLIVER DAVIS
UNITED STATES MAGISTRATE JUDGE

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION
SH -CR- 93 - 01

FEB -8 PM 4:57
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA,

Vs.

ROBERT L. VAN BUSKIRK

WAIVER OF ARRAIGNMENT

Arraignment is governed by Rule 10, Federal Rules of Criminal Procedure, which provides that a defendant shall be arraigned in open court after having been given a copy of the charging instrument, having the instrument read to him and explained, and been informed of the maximum possible penalties. The rule expresses a right afforded in all criminal prosecutions under the sixth amendment to the United States Constitution, and a waiver of such a right will only be allowed where it is determined that the waiver is knowingly and voluntarilly made.

Through execution of this waiver, defendant certifies that:

(1) he has been informed that he has a right to appear in open court before a United States Magistrate and publicly
   (a) have the charging instrument read;
   (b) have the maximum possible penalties explained; and
   (c) enter a plea.
(2) he has received a copy of the indictment or bill of information, and a copy of the pretrial order, prior to execution of this document;
(3) he has read or has had read to him the charging instrument and understands the substance and general nature of the charges;
(4) that he has been advised of the maximum possible penalties as to each of the counts for which he has been charged; and
(5) waiver is voluntary and not the result of force, threats, or promises of lieniency made by any government official.

Having first consulted with counsel, the undersigned defendant waives his right to be arraigned in open court before a United States District Judge or Magistrate on the above captioned indictment or bill of information, and enters a plea of **NOT GUILTY** to each of the counts in which he is charged and requests a **JURY TRIAL.**[1]

Signature of Defendant — Date 2/4/93

Signature of Defense Counsel — Date 2/4/93

Accepted By: J. OLIVER DAVIS
UNITED STATES MAGISTRATE

Tom Bush

Tom Bush-Atty 7043774164

[1] It is the policy of this court to require arraignment in open court where defendant wishes to enter a plea of guilty or waive the right to trial by jury.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

UNITED STATES OF AMERICA	)	DOCKET NO. 4:93CR01
	)	
vs.	)	ORDER UNSEALING APPLICATION
	)	FOR PROTECTIVE ORDER AND
ROBERT L. VAN BUSKIRK	)	PROTECTIVE ORDER

UPON MOTION of the United States of America, by and through Thomas J. Ashcraft, United States Attorney for the Western District of North Carolina, for an order directing that the Application for Protective Order and the Protective Order in the above-captioned case be unsealed; and

IT APPEARING TO THE COURT that there no longer exists any danger to the attendant investigation in this case;

NOW, THEREFORE, IT IS ORDERED that the Motion for Protective ORder and the Protective Order in the above-captioned case be unsealed.

This the 2nd day of February, 1993.

Richard L. Voorhees

RICHARD L. VOORHEES, CHIEF JUDGE
UNITED STATES DISTRICT COURT

United States District Court

WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA
V
ROBERT L. VAN BUSKIRK

WARRANT FOR ARREST

CASE NUMBER: 4:93CR01

To: The United States Marshal
and any Authorized United States Officer

Rec'd by U.S. Marshal
Date 01/12/93

YOU ARE HEREBY COMMANDED to arrest Robert L. Van Buskirk
Name

and bring him or her forthwith to the nearest magistrate to answer a(n)

SEALED
☒ Indictment ☐ Information ☐ Complaint ☐ Order of court ☐ Violation Notice ☐ Probation Violation Petition

charging him or her with (brief description of offense)

Conduct and attempt to conduct a financial transaction affecting interstate commerce;
Cause and attempt to cause a trade and business to file a return containing a material misstatement of fact;
Declare under penalty of perjury income tax;
Forfeiture.

in violation of Title 18;21;26 United States Code, Section(s) 2;982;1956;853;6050I;7203;7206

Sharon Parham
Name of Issuing Officer

Deputy
Title of Issuing Officer

Signature of Issuing Officer

January 7, 1993 - Asheville, N. C.
Date and Location

Bail fixed at $ DETENTION by
Name of Judicial Officer

RETURN

This warrant was received and executed with the arrest of the above-named defendant at Charlotte, NC

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST 01-29-93	Steve Peterson, S/A, DEA	

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

FEB 01

UNITED STATES OF AMERICA	)	DOCKET NO. 4:93CR01
	)	
vs.	)	MOTION TO UNSEAL
	)	APPLICATION FOR PROTECTIVE
ROBERT L. VAN BUSKIRK	)	ORDER AND PROTECTIVE ORDER

NOW COMES the United States of America, by and through Thomas J. Ashcraft, United States Attorney for the Western District of North Carolina, who respectfully shows unto the Court that the necessity for keeping the Motion to Seal Protective Order and Protective Order in the above captioned case sealed no longer exists.

THEREFORE, the United States respectfully moves the Court that the Motion to Seal Proteictive Order and the Protective Order numbered above be unsealed.

Respectfully submitted, this the 1st day of February, 1993.

THOMAS J. ASHCRAFT
UNITED STATES ATTORNEY

KENNETH D. BELL
ASSISTANT UNITED STATES ATTORNEY

United States District Court

Western DISTRICT OF North Carolina

FILED
CHARLOTTE, N.C.
JAN 29 1993
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA

V.

ORDER SETTING CONDITIONS OF RELEASE

Robert L. Van Buskirk
Defendant

Case Number: 4:93CR01

IT IS ORDERED that the release of the defendant is subject to the following conditions:

(1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.

(2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.

(3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall next appear at (if blank, to be notified) fed. courthouse
Place

Asheville, NC on _____
Date and Time

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

(✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.

(✓) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of 1,900,000.00 dollars ($_____) in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

WHITE COPY - COURT YELLOW - DEFENDANT BLUE - U.S. ATTORNEY PINK - U.S. MARSHAL GREEN - PRETRIAL SERVICES

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

( ) (6) The defendant is placed in the custody of:
(Name of person or organization) _____
(Address) _____
(City and State) _____ (Tel. No.) _____
who agrees (a) to supervise the defendant in accordance with all conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian or Proxy

(XXX) (7) The defendant shall:
(XX) (a) maintain or actively seek employment. unless retired, disabled or full-time student.
( ) (b) maintain or commence an educational program.
(XX) (c) abide by the following restrictions on his personal associations, place of abode, or travel:
Not leave the Western District of North Carolina without prior approval of USPO.
(XX) (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
The deft is to avoid anyone involved in unlawful use, possession, or trafficking of drugs, or involved in any other unlawful conduct.
(XX) (e) report on a regular basis to the following agency:
~~USPO: PSA Supervision; Drug testing & treatment as directed by USPO.~~
(X) (f) comply with the following curfew: 10:00 p.m. - 6:00 a.m. ~~24 Hour House Arrest w/ Electronic Monitoring~~ Except as approved by USPO,
(XX) (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
(XX) (h) refrain from excessive use of alcohol, and any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
( ) (i) undergo medical or psychiatric treatment and/or remain in an institution, as follows: _____
( ) (j) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property: _____
( ) (k) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money: _____
( ) (l) execute a bail bond with solvent sureties in the amount of $ _____.
( ) (m) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling, or the following limited purpose(s): _____
( ) (n) surrender any passport to _____
( ) (o) obtain no passport.
(XX) (p) The deft will not harass or retaliate against any (alleged) victim or (potential) witness in this case.

(X) Deft. is to post $100,000.00 bond with Clerk's Office by 5:00 p.m. Feb. 3, 1993.

WHITE COPY - COURT YELLOW - DEFENDANT BLUE - U.S. ATTORNEY PINK - U.S. MARSHAL GREEN - PRETRIAL SERVICES

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of any crime while on pre-trial release may result in an additional sentence to a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to five years of imprisonment, and a $250,000 fine or both to intimidate or attempt to intimidate a witness, victim, juror, informant or officer of the court, or to obstruct a criminal investigation. It is also a crime punishable by up to ten years of imprisonment, a $250,000 fine or both, to tamper with a witness, victim or informant, or to retaliate against a witness, victim or informant, or to threaten or attempt to do so.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

(1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than $250,000 or imprisoned for not more than ten years, or both;
(2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than $250,000 or imprisoned for not more than five years, or both;
(3) any other felony, you shall be fined not more than $250,000 or imprisoned not more than two years, or both;
(4) a misdemeanor, you shall be fined not more than $100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear may result in the forfeiture of any bond posted.

Acknowledgement of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

Signature of Defendant

Rt. 5 Box 449
Address

Reidsville, N.C. 286-3333
City and State Telephone

28139- 286-1774

Directions to United States Marshal

( ) The defendant is ORDERED released after processing.
( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 1/29/93

Signature of Judicial Officer

Name and Title of Judicial Officer

WHITE COPY - COURT YELLOW - DEFENDANT BLUE - U.S. ATTORNEY PINK - U.S. MARSHAL GREEN - PRETRIAL SERVICES

JAN 29 1993
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA
V.

Robert L. VAN BUSKIRK
Defendant

APPEARANCE BOND

CASE NUMBER: 4:93CR01

Non-surety: I, the undersigned defendant acknowledge that I and my . . .
Surety: We, the undersigned, jointly and severally acknowledge that we and our . . .
personal representatives, jointly and severally, are bound to pay to the United States of America the sum of
$ 2,000,000.00, and there has been deposited in the Registry of the Court the sum of
$ 100,000.00 in cash or _____ (describe other security.)

The conditions of this bond are that the defendant Robert L. VAN BUSKIRK (name)
is to appear before this court and at such other places as the defendant may be required to appear, in accordance with any and all orders and directions relating to the defendant's appearance in this case, including appearance for violation of a condition of defendant's release as may be ordered or notified by this court or any other United States District Court to which the defendant may be held to answer or the cause transferred. The defendant is to abide by any judgment entered in such matter by surrendering to serve any sentence imposed and obeying any order or direction in connection with such judgment.

It is agreed and understood that this is a continuing bond (including any proceeding on appeal or review) which shall continue until such time as the undersigned are exonerated.

If the defendant appears as ordered or notified and otherwise obeys and performs the foregoing conditions of this bond, then this bond is to be void, but if the defendant fails to obey or perform any of these conditions, payment of the amount of this bond shall be due forthwith. Forfeiture of this bond for any breach of its conditions may be declared by any United States District Court having cognizance of the above entitled matter at the time of such breach and if the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in such United States District Court against each debtor jointly and severally for the amount above stated, together with interest and costs, and execution may be issued and payment secured as provided by the Federal Rules of Criminal Procedure and any other laws of the United States.

This bond is signed on 1-29-93 at Charlotte, North Carolina.

Defendant. X _____ Address. RT. 5, Box 449 RAEF, N.C. 28139

Surety. X _____ Address. (PARKLINE RD)

Surety. _____ Address. RT 3 Box 445 B Rutherfordton N.C. 28139

Signed and acknowledged before me on 1-29-93 (Date)

_____
Judicial Officer/Clerk
Deputy Clerk

Approved: _____
Judicial Officer
PAUL B. TAYLOR, U.S. MAGISTRATE JUDGE

DEFENSE COUNSEL [ ]appointed [ ]retained MAGISTRATE CASE NUMBER

****

Date Filed: Indictment: 1-4-93 Date Arrested: 1/29/93
Complaint: _____ Date Bail Set: 1/29/93
Information: _____ Bail Conditions: $2 million see bk
Counts: 4 Book Coin to be posted by 2-3-93
Charges: Title: 18; 21; 26 72c3, Detention Hearing SET: ~~1/29/93~~ 1 co-surety
U.S.C. §: 2, 982, 1956, 353, 1050I, 7206

****

INITIAL APPEARANCE HEARING: Date: 1/29/93 Time: 2:40 to 3:58 Division: 419/3
Counsel present: Deft: Bush + Chambers Govt: Bell Judge: PBT Court Reporter: ET
Deft received cc: [X]Indictment [ ]Information [ ]Complaint. Deft understands charges: YES
Deft understands right to cnsl: [X]yes [ ]no. Deft requests court-appointed counsel: NO
CJA/23: _____. Deft sworn: _____. [ ]Allowed [ ]Denied.
Government moves: $100K w/co-sureties (wife + neighbor) + 24 hr. house arrest + elec Monitoring.
Notes: _____
Atty's Bush + Chambers make'y "Limited" appearance
* Δ to be rep'd by Asheville for next Court Appearance.

****

PROBABLE CAUSE HEARING: Date: _____ Time: _____ to _____ Division: _____
Counsel present: Deft: _____ Govt: _____ Judge: _____ Court Reporter: _____

Government Witnesses	Defense Witnesses
1)	1)
2)	2)
3)	3)

Government Exhibits	Defense Exhibits
1)	1)
2)	2)
3)	3)

Court finds Probable Cause: [ ]YES [ ]NO

****

DETENTION HEARING: Date: _____ Time: _____ to _____ Divsion: _____
Counsel present: Deft: _____ Govt: _____ Judge: _____ Court Reporter: _____

Government Witnesses	Defense Witnesses
1)	1)
2)	2)
3)	3)

Governmnet Exhibits	Defense Exhibits
1)	1)
2)	2)
3)	3)

Detention Ordered: [ ]YES [ ]NO Bond Set at: _____

****

ARRAIGNMENT: Date: _____ Time: _____ Division: _____ Court Reporter: _____
Counsel present: Deft: _____ Govt: _____ Judge: _____
Plea:
Not Guilty - Jury Trial Requested [ ]
Not Guilty - Jury Trial Waived [ ]
Guilty as to Counts: _____ [ ]
Nolo Contendere: _____ [ ]

DATE AND PLACE SET FOR TRIAL:
_____

****

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

UNITED STATES OF AMERICA	)	DOCKET NO. 4:92CR01
	)	
vs.	)	ORDER UNSEALING INDICTMENT
	)	
ROBERT L. VAN BUSKIRK	)	

UPON MOTION of the United States of America, by and through Thomas J. Ashcraft, United States Attorney for the Western District of North Carolina, for an order directing that the indictment in the above-captioned case be unsealed; and

IT APPEARING TO THE COURT that there no longer exists any danger to the attendant investigation in this case;

NOW, THEREFORE, IT IS ORDERED that the Bill of Indictment in the above-captioned case be unsealed.

This the 29th day of January, 1993.

PAUL B. TAYLOR
UNITED STATES MAGISTRATE JUDGE

4 U34

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

UNITED STATES OF AMERICA	)	DOCKET NO. 4:93CR01
	)	
vs.	)	MOTION TO UNSEAL INDICTMENT
	)	
ROBERT L. VAN BUSKIRK	)	

NOW COMES the United States of America, by and through Thomas J. Ashcraft, United States Attorney for the Western District of North Carolina, who respectfully shows unto the Court that the necessity for keeping the above-numbered Bill of Indictment sealed no longer exists.

THEREFORE, the United States respectfully moves the Court that the Bill of Indictment numbered above be unsealed.

Respectfully submitted, this the 29 day of January, 1993.

THOMAS J. ASHCRAFT
UNITED STATES ATTORNEY

KENNETH D. BELL
ASSISTANT UNITED STATES ATTORNEY

PBI

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

CRIMINAL NO. 4:93CR1

UNITED STATES OF AMERICA)
)
)
vs.) **ORDER**
)
)
ROBERT L. VAN BUSKIRK)
_____)

THIS MATTER is before the Court on the United States' Ex Parte Motion for a Protective Order. Defendant is under indictment for various money laundering and tax violations, which would subject property used in those transactions to criminal forfeiture. **21 U.S.C. § 853 (1986)**. The property of which the United States seeks forfeiture is identified in Count Two of the Bill of Indictment. The Protective Order is sought pursuant to 21 U.S.C. § 853(e)(1) to preserve the availability of the property for forfeiture should a conviction be obtained.

That the United States may obtain such an order is clear from the statute. **21 U.S.C. § 853(e)(1)(A) (1986) ("the court may enter a restraining order . . . to preserve the availability of property . . . upon the filing of an indictment or information . . . alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section."); In re Billman, 915 F.2d 916, 919-20 (4th Cir. 1990) (applying identical statute 18 U.S.C. § 1963(d)(1)(A) in a RICO forfeiture). But see United States v. Harvey, 814 F.2d 905, 929 (4th Cir. 1987), superseded as to other issues, In re Forfeiture Hearing as to Caplin & Drysdale, 837 F.2d 637 (4th Cir. 1988) (en banc),**

aff'd, ____ U.S. ____, 109 S. Ct. 2646 (1989) (indicating that more than the mere Bill of Indictment is required to show probable cause to restrain property before trial). Still, the requirements of Fed. R. Civ. P. 65 apply as they would to any restraining order. Harvey, **814 F.2d at 929; United States v. Thier, 801 F.2d 1463, 1468 (5th Cir. 1986)**. By the terms of that rule, the Court may not restrain property without a hearing for longer than ten (10) days. **Fed. R. Civ. P. 65(b), 28 U.S.C. (1987)**. The Court finds that the Bill of Indictment itself satisfies the requisite showing under Rule 65, and that a protective order is necessary to preserve the availability of the property. **See Billman, supra; United States v. Monsanto, 924 F.2d 1186, 1195 (2nd Cir. 1991) (en banc); Thier, supra**.

IT IS, THEREFORE, ORDERED that the United States' motion is **ALLOWED**, and a protective order is hereby **ISSUED**.

IT IS FURTHER ORDERED that the only property covered by this protective order is $16,000 in United States Currency and any of Defendant's interest in Fox Haven Plantation, Inc., and B & T Aviation, Inc.

IT IS FURTHER ORDERED that this protective order shall expire in ten (10) days, within which time the United States will be granted a hearing to show that Defendant is likely to dispose of the property covered by this order and that an injunction should be granted by this Court. Such hearing shall take place at 2:30 PM on February 4, 1993, at Asheville, North Carolina, unless a different hearing time is established at the request of either or both parties.

THIS the 25th day of January, 1993.

Richard L. Voorhees

RICHARD L. VOORHEES, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

UNITED STATES OF AMERICA,	)	NO. 4:93CR01
	)	
Plaintiff,	)	APPLICATION
v.	)	**FOR**
	)	**PROTECTIVE**
	)	**ORDER**
ROBERT L. VAN BUSKIRK,	)	
	)	
Defendant.	)	
	)	

NOW COMES THE UNITED STATES OF AMERICA, by and through Thomas J. Ashcraft, United States Attorney for the Western District of North Carolina, and the undersigned counsel, and applies to the Court for a PROTECTIVE ORDER to preserve the availability of property subject to forfeiture under Bill of Indictment No. 4:93CR01, pursuant to 18 U.S.C. § 982(a)(1); 18 U.S.C. § 982(b)(1)(A); and 21 U.S.C. § 853(e)(1)(A).

1. A Grand Jury sitting within the Western District of North Carolina indicted the above defendant for money laundering and Internal Revenue Service violations. See Exhibit A, a copy of Bill of Indictment No. 4:93CR01 (attached and incorporated by reference) Included in the indictment is one count seeking forfeiture of the defendant's interest in certain property which was involved in or traceable to one or more of the aforementioned violations. 18 U.S.C. § 982(a)(1).

2. The procedures for forfeiting properties under 18 U.S.C. § 982 are set forth in various subsections of 21 U.S.C. § 853. See

18 U.S.C. § 982(b)(1). Section 853 provides in pertinent part:

> Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section --
>
> > (A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; . .

21 U.S.C. § 853(e)(1) (emphasis added). See also United States v. Bouler, 799 F. Supp. 581 (W.D.N.C. 1992) (ex parte post-indictment protective order may issue upon grand jury finding of probable cause).

3. The property sought for forfeiture in the aforesaid Bill of Indictment and therefore subject to the proposed PROTECTIVE ORDER is:

> (a) Any and all direct, indirect, beneficial, managerial, or other interest the defendant may have in the corporation known as FOX HAVEN PLANTATION, INC. (a Florida corporation), including but not limited to any real estate holdings, parcels, lots, tracts, or other realty legal description; any liquid or current assets including cash, accounts receivables, stocks, bonds; or any other tangible or intangible asset of said corporation which the defendant in any way can convey, lease, license, liquidate, sell, grant, bargain, deliver, or otherwise transfer out of the jurisdiction of the Court pending this criminal proceeding;
>
> (b) Any and all direct, indirect, beneficial, managerial, or other interest the defendant may have in the corporation known as B & T AVIATION CORPORATION (a Florida corporation), including but not limited to any real estate holdings, parcels, lots, tracts, or other

realty legal description; any liquid or current assets including cash, accounts receivables, stocks, bonds; or any other tangible or intangible asset of said corporation which the defendant in any way can convey, lease, license, liquidate, sell, grant, bargain, deliver, or otherwise transfer out of the jurisdiction of the Court pending this criminal proceeding; and,

(c) The sum of $16,000.00 IN UNITED STATES CURRENCY or similar substitute current assets (as determined by the Special Agents serving this Protective Order) up to the sum of $16,000.00 in value such as a bank account, money market fund, stocks, bonds, or the like in the name of, in the possession of, belonging to, or beneficially owned by the defendant.

4. There is probable cause to believe:

(a) that the property set forth in the Bill of Indictment and more particularly described in paragraph 3 above would be subject to forfeiture in the event of conviction; and

(b) that public notice in a Registry of Deeds or other public depository would jeopardize the availability of the property for forfeiture and possibly harm an ongoing criminal investigation.

WHEREFORE, THE UNITED STATES OF AMERICA, RESPECTFULLY PRAYS THE COURT TO:

(a) sign and enter the proposed PROTECTIVE ORDER;

(b) direct one or more special agents of the federal law enforcement agencies involved in this investigation personally to serve a copy of the PROTECTIVE ORDER on the above defendant with a copy of the indictment;

(c) seal the PROTECTIVE ORDER until such other time as the Court deems appropriate because the ongoing criminal investigation may be harmed by the release of the ORDER and the

related Bill of Indictment; and,

(c) provide such further relief as the Court deems appropriate.

THOMAS J. ASHCRAFT
United States Attorney

FRANK D. WHITNEY
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

93 JAN 14 PM 2:
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA	)	DOCKET NO. 4:93CR01
	)	
vs.	)	ORDER SEALING
	)	BILL OF INDICTMENT
ROBERT L. VAN BUSKIRK	)	
	)	

UPON MOTION of the United States of America, by and through Thomas J. Ashcraft, United States Attorney for the Western District of North Carolina, for an order directing that the Bill of Indictment in this matter be sealed, pursuant to the on-going nature of the investigation in this matter;

NOW THEREFORE IT IS ORDERED that the Bill of Indictment of the matter be sealed and remain sealed until such time as the United States thereafter moves for the unsealing of same.

This the 14th day of January, 1993.

PAUL D. TAYLOR
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

UNITED STATES OF AMERICA	)	DOCKET NO. 4:93CR01
	)	
vs.	)	MOTION TO SEAL
	)	BILL OF INDICTMENT
ROBERT L. VAN BUSKIRK	)	
	)	

NOW COMES the United States of America, by and through Thomas J. Ashcraft, United States Attorney for the Western District of North Carolina, who moves this Court for an Order directing that the Bill of Indictment in this matter be sealed immediately, following the filing of same, and that same remain sealed until further order of this Court, pursuant to the on-going investigation in this matter.

This the 4th day of January, 1993.

THOMAS J. ASHCRAFT
UNITED STATES ATTORNEY

KENNETH D. BELL
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION

UNITED STATES OF AMERICA,	)	NO. 4:93CR01
	)	
Plaintiff,	)	BILL OF INDICTMENT
v.	)	
	)	Violation:
	)	
ROBERT L. VAN BUSKIRK,	)	18 U.S.C. § 2
	)	18 U.S.C. § 982
Defendant.	)	18 U.S.C. § 1956
	)	21 U.S.C. § 853
	)	26 U.S.C. § 6050I
	)	26 U.S.C. § 7203
	)	26 U.S.C. § 7206

THE GRAND JURY CHARGES:

COUNT ONE

1. On or about March 12, 1992, in the Western District of North Carolina, the defendant

ROBERT L. VAN BUSKIRK

did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate commerce, that is, the sale and transfer of twenty (20) acres of real property in Fox Haven Plantation, Rutherford County, North Carolina, and landing rights on the associated air strip in exchange for monetary instruments in the approximate amount of $16,000.00 in United States currency.

2. The defendant knew that property involved in the financial transaction (that is, monetary instruments in the approximate amount of $16,000.00 in United States currency) was represented to him to be the proceeds of a specified unlawful activity (that is, an undercover federal law enforcement officer told the defendant that the $16,000.00 was the proceeds of the distribution of controlled substances).

3. The defendant knew that the transaction was designed in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of said specified unlawful activity.

4. The defendant did aid and abet others, both known and unknown to the Grand Jury, in said financial transactions.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 1956(a)(3)(B) AND 2.

COUNT TWO -- FORFEITURE

1. In the commission of Count One, the defendant

ROBERT L. VAN BUSKIRK

committed a money laundering offense in violation of Title 18, United States Code, Section 1956.

2. Any and all interest of the defendant in any property involved in Count One and in any property traceable to the property involved in Count One is hereby forfeited to the United States, including but not limited to any interest of the defendant in: Fox Haven Plantation, Inc. (a Florida corporation); B & T Aviation Corporation (a Florida corporation); and $16,000.00 in United States currency.

3. As a result of acts and omissions of the defendant, some of the property involved cannot be located after the exercise of due diligence; all or portions of the property have been transferred and sold to, and deposited with, third parties; the property has been placed beyond the jurisdiction of the court; and the property has been commingled with other property which cannot be divided without difficulty. Therefore other property of the defendant is subject to forfeiture, and any and all interest of the defendant in other property up to the value of the property involved in Count One is forfeitable to the United States.

ALL PURSUANT TO TITLE 18, UNITED STATES CODE, SECTIONS 982(a)(1) AND 982(b)(1)(A), AND TITLE 21, UNITED STATES CODE, SECTION 853(p).

COUNT THREE

1. On or about June 17, 1992, in the Western District of North Carolina and elsewhere, the defendant

ROBERT L. VAN BUSKIRK

knowingly and willfully did cause and attempt to cause a trade and business [that is, Fox Haven Plantation, Inc.,] to file a return required under Section 6050I of Title 26, United States Code [that is, IRS Form 8300 "Report of Cash Payments Over $10,000 Received in a Trade or Business"] containing a material misstatement of fact [that is, the true name and address of the "Identity of Individual From Whom the Cash Was Received"].

2. The defendant did aid and assist others, both known and unknown to the Grand Jury, in the commission of this offense.

ALL IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTIONS 6050I(f)(1)(B), 7203, AND 7206(2).

COUNT FOUR

1. On or about June 17, 1992, in the Western District of North Carolina and elsewhere, the defendant

ROBERT L. VAN BUSKIRK

knowingly and willfully made and subscribed a document which contains and is verified by a written declaration that it is made under the penalties of perjury [that is, IRS Form 8300 "Report of Cash Payments Over $10,000 Received in a Trade or Business"] which he did not believe to be true and correct as to every material matter [that is, the defendant did not believe the name and address of the "Identify of Individual From Whom Cash Was Received" was true and correct].

2. The defendant did aid and assist others, both known and unknown to the Grand Jury, in the commission of this offense.

ALL IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTIONS 7206(1) AND 7206(2).

A TRUE BILL:

(b)(3):Rule 6(e)

FOREMAN

THOMAS J. ASHCRAFT
United States Attorney

KENNETH D. BELL
Assistant United States Attorney

FRANK D. WHITNEY
Assistant United States Attorney

United States District Court

WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

V.

ROBERT L. VAN BUSKIRK

AMENDED

NOTICE

CASE NUMBER: 4:93CR1

TYPE OF CASE: ☐ CIVIL ☒ CRIMINAL

☒ TAKE NOTICE That a proceeding in this case has been set for the place date, and time set forth below:

PLACE	ROOM NO.
U. S. Courthouse Building 100 Otis St. Asheville, N. C.	Main Courtroom - Third floor
	DATE AND TIME Wednesday, March 9, 1994 - 5:00 p.m.

TYPE OF PROCEEDING

Factual Basis & Sentencing

☐ TAKE NOTICE that the proceeding in this case has been continued as indicated below:

PLACE	DATE AND TIME PREVIOUSLY SCHEDULED	CONTINUED TO, DATE AND TIME

TERRY LEITNER, Acting Clerk

U.S. MAGISTRATE OR CLERK OF COURT

2-23-94

DATE

Sharon Parham

(BY) DEPUTY CLERK

To: Tom Bush
U. S. Attorney
U. S. Marshal
U. S. Probation

United States District Court

WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA
V.
ROBERT L. VAN BUSKIRK

NOTICE

CASE NUMBER: 4:93CR1

TYPE OF CASE: ☐ CIVIL ☒ CRIMINAL

☒ TAKE NOTICE That a proceeding in this case has been set for the place date, and time set forth below:

PLACE	ROOM NO.
U. S. Courthouse Building 100 Otis St. Asheville, N. C.	Main Courtroom - Third floor
	DATE AND TIME Tuesday, March 8, 1994 - 5:00 p.m.

TYPE OF PROCEEDING

Factual Basis & Sentencing

☐ TAKE NOTICE that the proceeding in this case has been continued as indicated below:

PLACE	DATE AND TIME PREVIOUSLY SCHEDULED	CONTINUED TO, DATE AND TIME

TERRY LEITNER, Acting Clerk
U.S. MAGISTRATE OR CLERK OF COURT

2-22-94
DATE

Sharon Parham
(BY) DEPUTY CLERK

To: Tom Bush
U. S. Attorney
U. S. Marshal
U. S. Probation

[illegible]
500 EAST TRADE STREET
CHARLOTTE, NORTH CAROLINA 28202
704-377-4164
TELECAX 704-377-5503

W. DAVID THURMAN
SAMUEL A. WILSON, III
JOHN D. BOUTWELL

*ADMITTED IN NORTH CAROLINA AND FLORIDA

644 S.E. 4TH AVENUE
FORT LAUDERDALE, FLORIDA 33301
305 764 6766

February 15, 1994

The Honorable Richard L. Voorhees
U.S. District Court
U.S. Courthouse
100 Otis Street, Room 241
Asheville, North Carolina 28801

Re: Robert L. VanBuskirk
File No. 4:93CR01

Dear Judge Voorhees:

Ken Bell and I had wanted to try to get the above-referenced defendant sentenced by you in March, but Ken advised, that your calendar was full at that time. There was a suggestion the matter might be put on for sentencing for a visiting Judge.

Both Ken and I would prefer that you be the sentencing Judge, since you took this very complicated plea, along with handling the very complicated seizure matters.

The plea is a specific plea for a sentence of probation, but nevertheless, because of the familiarity with you of the case, both Ken and I would prefer that the matter be done by you.

We would prefer it be handled by you, even if it might mean a May or June date. Would you please advise, if it would be possible to put this matter on one of your criminal sentencing calendars for sometime in late spring or summer.

Sincerely yours,

Tom Bush

TB/lab

pc: (b)(6); (b)(7)(C)

WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

N O T I C E

V.

Robert L. Van Buskirk

CASE NUMBER: SH-CR-93-01-01

TAKE NOTICE that a proceeding in this case has been set for the place, date, and time set forth below:

PLACE: U.S. Courthouse Bldg. 100 Otis Street Asheville, N.C.	ROOM NO. Main Courtroom, Third Floor DATE AND TIME: Monday May 3, 1993 10:00 a.m.

TYPE OF PROCEEDING: Calendar Call

THOMAS J. MCGRAW, CLERK

4-19-93
Date

By: (b)(6); (b)(7)(C)

TO: Robert L. Van Buskirk
Tom Bush

1201 EAST BOULEVARD
CHARLOTTE, NORTH CAROLINA 28203
704-377-4164
TELEFAX 704-377-5503

TOM BUSH*
W. DAVID THURMAN
SAMUEL A. WILSON, III

*ADMITTED IN NORTH CAROLINA AND FLORIDA

FLORIDA OFFICE
644 S.E. 4TH AVENUE
FORT LAUDERDALE, FLORIDA 33301
305-764-6766

March 15, 1993

Paul B. Taylor
United States Magistrate Judge
Charles R. Jonas Federal Bldg.
Room 168
401 W. Trade Street
Charlotte, North Carolina 28202

Re: Robert L. VanBuskirk
Case No. 4: 93-CR-01

Dear Magistrate Judge Taylor:

Enclosed please find an Order reflecting what I believe is what you requested.

I have forwarded, via fax, a copy of this letter and the proposed order to Ken Bell.

Sincerely yours,

Tom Bush

Tom Bush

TB/lab

Enclosure

1201 EAST BOULEVARD
CHARLOTTE, NORTH CAROLINA 28203
704-377-1164
TELEFAX 704-377-5503

TOM BUSH*
W. DAVID THURMAN
SAMUEL A. WILSON, III

*ADMITTED IN NORTH CAROLINA AND FLORIDA

FLORIDA OFFICE
644 S.E. 4TH AVENUE
FORT LAUDERDALE, FLORIDA 33301
305 764 6766

March 10, 1993

Thomas J. McGraw
U.S. District Court Clerk
Criminal Clerks Office
Charles R. Jonas Federal Building
401 West Trade Street
Charlotte, North Carolina 28202

RECEIVED
CHARLOTTE, N.C.
MAR 1993
U.S. DISTRICT COURT

Re: Robert L. VanBuskirk
File No. 4: 93-CR-01

Dear Mr. McGraw:

Enclosed please find an original and three copies of the Motion to Compel Discovery Deadline and Motion to Compel Transcription of Tapes.

This Motion should be sent to Magistrate Judge Taylor, even though it is Shelby Division. Magistrate Davis evidently has a conflict and has been referring the Motions to Magistrate Taylor.

It would be appreciated if you would file same and return the extra copies to me in the pre-addressed, stamped envelope.

Sincerely yours,

Tom Bush

TB/lab

Enclosures

1201 EAST BOULEVARD
CHARLOTTE, NORTH CAROLINA 28203
704-377-4164
TELEFAX 704-377-5503

TOM BUSH
W. DAVID THURMAN
SAMUEL A. WILSON, III

644 S.E. 4TH AVENUE
FORT LAUDERDALE, FLORIDA 33301
305-764-6766

March 9, 1993

U.S. District Court
U.S. Courthouse
Criminal Department
Room 309, 100 Otis Street
Asheville, North Carolina 28801

Re: Robert L. VanBuskirk
File No. 4: 93CR01

To the Clerk of Court:

Enclosed please find an original and three copies of the Notice of Defense Based Upon Medical Condition in the above-mentioned matter.

It would be appreciated if you would file same and return the extra copies to me in the pre-addressed, stamped envelope I have enclosed for your convenience.

Sincerely yours,

Tom Bush

TB/lab

Enclosure

pc: Robert L. VanBuskirk

1201 EAST BOULEVARD
CHARLOTTE, NORTH CAROLINA 28203
704-377-4164
TELEFAX 704-377-5503

TOM BUSH*
W. DAVID THURMAN
SAMUEL A. WILSON, III

*ADMITTED IN NORTH CAROLINA AND FLORIDA

FLORIDA OFFICE
644 S.E. 4TH AVENUE
FORT LAUDERDALE, FLORIDA 33301
305-764-6766

March 3, 1993

U.S. District Court
U.S. Courthouse
Criminal Department
Room 309, 100 Otis Street
Asheville, North Carolina 28801

RECEIVED
ASHEVILLE
MAR 5 1993
CLERK, U.S. DIST. COURT
W. DIST. OF N.C.

Re: Robert L. VanBuskirk
File No. 4: 93CR01

To the Clerk of Court:

Enclosed please find an Emergency Motion. I have forwarded a copy to opposing counsel, along with a copy to the U.S. Magistrate, assuming he will hear it. Please note that I am out of state from March 12th - March 18th if the court decides to hold a hearing.

Sincerely yours,

Tom Bush

TB/lab

Enclosure

pc: J. Toliver Davis
Kenneth D. Bell
Robert L. VanBuskirk

1201 EAST BOULEVARD
CHARLOTTE, NORTH CAROLINA 28203
704-377-4164
TELEFAX 704-377-5503

TOM BUSH*
W. DAVID THURMAN
SAMUEL A. WILSON, III

*ADMITTED IN NORTH CAROLINA AND FLORIDA

FLORIDA OFFICE
644 S.E. 4TH AVENUE
FORT LAUDERDALE, FLORIDA 33301
305-764-6766

February 19, 1993

RECEIVED
ASHEVILLE, N.C.
FEB 22 1993
CLERK, U.S. DISTRICT COURT
W. DIST. OF N.C.

U.S. District Court
U.S. Courthouse
Criminal Department
Room 309, 100 Otis Street
Asheville, North Carolina 28801

Re: Robert L. VanBuskirk
File No. 4: 93CR01

To Whom It May Concern:

Enclosed please find an original and three copies of the Joint Motion to Continue in the above-mentioned matter.

I would appreciate you filing same and returning the extra copies to me in the self-addressed, stamped envelope I have enclosed for your convenience.

Sincerely yours,

Tom Bush

TB/lab

Enclosures

pc: Robert L. VanBuskirk

1201 EAST BOULEVARD
CHARLOTTE, NORTH CAROLINA 28203
704-377-4164
TELEFAX 704-377-5503

TOM BUSH*
W. DAVID THURMAN
SAMUEL A. WILSON, III

*ADMITTED IN NORTH CAROLINA AND FLORIDA

FLORIDA OFFICE
644 S.E. 4TH AVENUE
FORT LAUDERDALE, FLORIDA 33301
305-764-6766

February 15, 1993

U.S. District Court
U.S. Courthouse
Criminal Department
Room 309, 100 Otis Street
Asheville, North Carolina 28801

FILED
FEB 16 1993
CLERK, U.S. DIST. COURT
W. DIST. OF N.C.

Re: Robert L. VanBuskirk
File No. 4: 93CR01

To Whom It May Concern:

Enclosed herein, please find our Discovery Motions.

I had hoped to be able to do what we do in the Charlotte Division and that is, use the Discovery Motions that are on file with the Federal Clerk and just file the cover sheet checking which Motions we wanted.

However, in reviewing the Arraignment Order you sent to me, it appears that you want the originals of any motions that we are filing.

Therefore, I provide you with our Discovery Motions under one cover page called "Discovery Motions" in accordance with the Arraignment Order.

If you have any questions, please to not hesitate to contact me.

Sincerely yours,

Tom Bush

TB/lab

Enclosures

1201 EAST BOULEVARD
CHARLOTTE, NORTH CAROLINA 28203
704-377-4164
TELEFAX 704-377-5503

TOM BUSH*
W. DAVID THURMAN
SAMUEL A. WILSON, III

*ADMITTED IN NORTH CAROLINA AND FLORIDA

FLORIDA OFFICE
644 S.E. 4TH AVENUE
FORT LAUDERDALE, FLORIDA 33301
305-764-6766

February 12, 1993

U.S. District Court
U.S. Courthouse
Room 309, 100 Otis Street
Asheville, North Carolina 28801

Re: Calendar of Robert L. VanBuskirk
File No. 4: 93CR01

To Whom It May Concern:

I noticed in the Arraignment Order in the above-referenced matter, that it is set for the "March" Asheville term.

I expect this case will more than likely be continued by both the government and myself. However, I would appreciate a telephone call as to any dates dealing with court appearances between March 12th and March 19, 1993, as I will be in San Francisco with my family on those dates with non-refundable tickets.

It would be appreciated, if you would immediately advise me, if I am going to be stuck with any calendar call or anything of that nature during that period of time.

Thank you for your consideration.

Sincerely yours,

Tom Bush

TB/lab

pc: Kenneth Bell

UNITED STATES OF AMERICA

V.

Robert L. Van Buskirk

N O T I C E

CASE NUMBER: SH-CR-93-01-01

TAKE NOTICE that a proceeding in this case has been set for the place, date, and time set forth below:

PLACE: U.S. Courthouse Bldg. 100 Otis Street Asheville, N.C.	ROOM NO. Main Courtroom, Third Floor
	DATE AND TIME: Monday March 1, 1993 10:00 a.m.

TYPE OF PROCEEDING: Calendar Call

THOMAS J. MCGRAW, CLERK

2-11-93
Date

By: (b)(6); (b)(7)(C)

TO: Robert L. Van Buskirk
Tom Bush

United States District Court

WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

V.

ROBERT L. VAN BUSKIRK

NOTICE

CASE NUMBER: 4:93CR01

TYPE OF CASE:

☐ CIVIL ☒ CRIMINAL

☒ TAKE NOTICE That a proceeding in this case has been set for the place date, and time set forth below:

PLACE	ROOM NO.
U. S. Courthouse Building 100 Otis St. Asheville, N. C.	Main Courtroom - Third floor
	DATE AND TIME Wednesday, February 10, 1993 - 9:00 a.m.

TYPE OF PROCEEDING

Arraignment

☐ TAKE NOTICE that the proceeding in this case has been continued as indicated below:

PLACE	DATE AND TIME PREVIOUSLY SCHEDULED	CONTINUED TO, DATE AND TIME

Thomas J. McGraw, Clerk

U.S. MAGISTRATE OR CLERK OF COURT

2-1-93

DATE

Sharon Parham

(BY) DEPUTY CLERK

To: Robert L. Van Buskirk
Tom Bush
Rudolph Parks
U. S. Attorney
U. S. Probation
U. S. Marshal